

PROJECT MANUAL
FOR
CONTRACT OF CONSTRUCTION
OF

PALISADES FIRE STRUCTURAL DEBRIS
REMOVAL SERVICES

15601 W. Sunset Blvd,
Pacific Palisades, CA 90272

MOUNTAINS RECREATION &
CONSERVATION AUTHORITY

BID DOCUMENTS – APRIL 2025

BID OPENING
1:00 PM
APRIL 31, 2025

TABLE OF CONTENTS

DIVISION 01 – GENERAL REQUIREMENTS

SECTION:

01 00 00	PROJECT SUMMARY AND SCOPE OF WORK
01 00 01	NOTICE INVITING BIDS
01 00 02	INSTRUCTION TO BIDDERS
01 00 03	BID SUBMITTAL CHECKLIST
01 00 04	BID SUBMISSION FORM AND SCHEDULE OF BID ITEMS
01 00 05	PROPOSER / BIDDER STATISTICAL INFORMATION FORM
01 00 06	CONTRACTOR QUESTIONNAIRE / PREQUALIFICATION
01 01 01	STANDARD CONSTRUCTION AGREEMENT (FEMA VERSION)
01 01 02	GENERAL CONDITIONS
01 01 03	SPECIAL CONDITIONS
01 02 03	LABOR COMPLIANCE PROGRAM

REPORTS:

EXHIBIT E – SCOPE OF WORK

010000 – SUMMARY AND SCOPE OF WORK

1.1 PROJECT INFORMATION

A. Project Identification

The furnishing of all labor, material, equipment, services and incidentals necessary for Work of the Palisades Fire Structural Debris Removal Services project, located at multiple locations as listed below and as set forth in the Contract Documents which include, but are not limited to, the Drawings, Addenda and Specifications.

1. Name: Palisades Fire Structural Debris Removal Services
2. Site Address:
 - a. Temescal Gateway Park Retreat and Conference Center, 15601 W Sunset Blvd, Pacific Palisades, CA 90272.
 - b. Temescal Ridge Trailhead, 16701 Vía La Costa, Pacific Palisades, CA 90272.
 - c. Carbon Beach East Accessway, 22132 Pacific Coast Hwy, Malibu, CA 90265.
 - d. Via La Costa Accessway (La Costa Beach), 21554 Pacific Coast Hwy, Malibu, CA 90265.
 - e. Las Flores Beach Accessway, 20802 Pacific Coast Hwy, Malibu, CA 90265.
 - f. Moonshadows Accessway (Big Rock Beach). 20340 Pacific Coast Hwy, Malibu, CA 90265.
 - g. Miramar Coastal Overlook, 19602 Pacific Coast Hwy, Malibu, CA 90265
 - h. Las Tunas Beach Accessway, 19016 Pacific Coast Hwy, Malibu, CA 90265
3. Municipal Jurisdiction: Various. Los Angeles County, City of Los Angeles, and City of Malibu.

B. Contacts

1. Owner: Mountains Recreation and Conservation Authority (MRCA).
570 West Avenue 26, Suite 100
Los Angeles, CA 90065
Tel (323) 221-9944
Fax (323) 221-9934

C. Schedule

1. Contractor recognizes that time is of the essence for the completion of debris removal. Contractor shall devote such time, attention and resources to the performance of Contractor's services and obligations hereunder as shall be necessary to complete this project.

2. Anticipated Notice of Award of Bid: May 2, 2025. This date is subject to change without notice.
3. Anticipated Construction Start Date: May 12, 2025.
4. Anticipated Contract Length: 45 Calendar Days
5. Phasing or Sequencing Requirements: None
6. Schedule of Work: Contractor shall utilize standard industry scheduling software to employ the Critical Path Method (CPM) in the development and maintenance of the construction schedule. Refer to General and Special Conditions for additional Schedule Submittal and Maintenance Requirements.
7. Inclement Weather Days: Contractor shall include Inclement Weather Days within the baseline schedule with a total duration equivalent to average in the area as determined by NOAA. The weather days shall be shown on the schedule and if not used will become float. Refer to General Conditions for specific inclement weather information.
8. Contractor shall commence performance of the Work upon the date specified in the Notice to Proceed and shall furnish sufficient forces, facilities and materials, work such hours, including extra shifts and overtime operations, so as to fully perform the Work in accordance with the dates listed above.

1.2 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Work of Project is defined by the Contract Documents and consists of the following:
 1. The furnishing of all labor, materials, equipment, services and incidentals necessary for Work on Palisades Fire Debris Removal Services project, taking place at all the locations identified above in Project Identification section. Work includes but is not limited to the collection, removal, segregation, reduction, recycling, and disposal of the debris caused by the disaster. The Contractor shall not be paid to remove, process or dispose of debris that is unrelated to disaster damage, without written direction from the Owner. Each debris type (vegetative, construction and demolition, sediment/mud/rock, white goods, and vehicles) shall be hauled and managed separately.
 2. The Contractor shall dispose of all debris, reduced debris, and other products of the debris management process in accordance with all applicable federal, state and local laws, standards and regulations. All debris shall be disposed of at facilities approved as permitted by the Regional Water Quality Control Board, Local Enforcement Agency, and California Department of Resources Recycling and Recovery, or other local agencies as applicable. The Contractor shall maintain disposal records and documentation. The Contractor is responsible for making their own arrangements with landfill locations including, but not limited to, extended hours of operation and billing

3. **Monitoring and Documentation.** The Contractor shall provide and submit to the Owner, all reports and documents as may be necessary to adequately document its performance of the Contract, to include all requirements for documentation requested by FEMA or the state emergency management agency for reimbursement of costs. Contractor shall provide daily progress reports to the Owner within 24 hours of the end of the workday. Such reports shall contain, at a minimum; total quantity collected by type of debris, daily totals by debris type, and maps and description of the geographical areas addressed by the Contractor. The Contractor shall allow monitoring and inspections as necessary to determine contract performance. This may include, but is not limited to, on-site inspections, monitoring of operations, and inspections of operating records during Contractor's operating hours. Contractor will notify Owner each day of the number of work crews and disposal sites that will need assigned monitors, 24 hours before crews arrive, to facilitate the proper staffing for certification of truck volumes and issuance of load tickets. Owner may increase or decrease the number of Monitors provided to the Contractor to meet the debris removal needs. No debris shall be loaded without the presence of a monitor issuing a paper or electronic load ticket to document the origin of the load, date, contractor name, truck number, truck capacity, point of debris collection, loading departure time, etc.

4. **Owner Allowance:** An Owner's Allowance of \$20,000 shall be included within Contractor's Total Price. The allowance amount has already been inserted on the Bid Submission Form and the Contractor shall acknowledge the increase to their base bid amount by the aforementioned allowance by adding the values together and inserting the Total Price.
 - a. The allowance shall be identified as an individual line item on the Schedule of Values.

 - b. The Allowance shall not be used unless Contractor receives written authorization from MRCA identifying additional work, at which time Contractor shall submit to MRCA for its consideration and approval or disapproval the cost and time associated with the work. Contractor shall submit requests in the same manner as Change Orders. Written notification clearly identifying the additional scope of work required, and the cost and time approved, shall be approved by MRCA before such work is performed. The use of the allowance is at the sole discretion of MRCA.

 - c. Any funds remaining in the Allowance at the completion of the project shall remain unspent and allocated to MRCA via a deductive Change Order.

B. Type of Contract

1. Project will be constructed under a single prime contract.

C. Permits Required

1. Contractor shall be responsible for obtaining the necessary permits for the debris removal services as needed in the disaster area.

2. All Construction Permit fees shall be paid by Contractor and reimbursed by the MRCA. Permit fees will be reimbursed with 5% mark-up. This excludes the General Permit for the SWPPP which will be paid by MRCA. All other fees shall be included in the contract price for this work.

D. Warranties Required

1. Contractor shall obtain warranties or guarantees for the following items: None.

1.3 WORK UNDER SEPARATE CONTRACTS

A. General

Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar Conditions of the Contract. Contractor shall cooperate fully with separate contractors so work on those contracts may be carried out smoothly, without interfering with or delaying work under this Contract or other contracts. Coordinate the Work of this Contract with work performed under separate contracts.

B. Concurrent Work

Owner will self-perform or award separate contract(s) for the following construction operations at Project site. Those operations will be conducted simultaneously with work under this Contract.

1. Hazardous Tree Removal
2. Emergency Utility Repairs
3. Security Fencing Replacement

C. Owner Operations

Owner will perform routine maintenance activities, as needed, on land adjacent to Project site. Contractor shall cooperate fully with Owner's crews so maintenance activities may be carried out smoothly.

D. Furniture, Fixtures and Equipment (Materials) - Owner furnished, Owner installed (OFOI)

1. Certain materials are identified in the Contract Documents as "By Owner", "By MRCA", or Owner Furnished, Owner Installed (OFOI).
2. On dates and during times designated by Owner, Contractor shall provide clear off-loading, receiving, protected storage, and Owner's dumpster space areas for the use of Owner or Owner's third party OFOI installation contractors. At such times, Contractor shall also make clear routes and access available to all rooms and spaces to receive OFOI materials.
3. Contractor shall cooperate fully with Owner or Owner's third party OFOI installation contractors.

4. Contractor may be requested by Owner to provide supplemental labor and equipment to support OFOI activities. Such requests must be submitted in accordance with the change order clauses of the Contract.

E. Tests and Inspections

Tests and inspections not explicitly assigned to Owner are Contractor's responsibility. Owner shall provide the following:

None.

1.4 ACCESS TO SITE

A. General

Contractor shall have partial use of Project site for operations during construction period. Contractor's use of Project site is limited only by Owner's right to perform work or to retain other contractors on portions of Project.

B. Use of Site

Limit use of Project site to area indicated on the drawings. Do not disturb portions of Project site beyond areas in which the Work is indicated.

1. Driveways, Walkways and Entrances: Keep driveways and entrances serving premises clear and available to Owner, Owner's employees, tenants, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
 - a. Schedule deliveries to minimize use of driveways and entrances by construction operations.
 - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
2. Easements: Access to project areas identified along Pacific Coast Highway is through distinct easements for properties not owned in fee. Obtain final confirmation on easement boundary from Owner prior to commencing work.
3. Construction Offices: None
4. Restrooms: Contractor is responsible for supplying temporary toilet facilities for use by all trades.

C. Restrictions to Access

The following restrictions apply:

1. Load limits: Contractor shall check the load limits with the applicable jurisdictional authorities along haul routes and comply with all provisions of Haul Route and other Permits.
2. Bridge/Tunnel Height: Contractor shall check with the applicable jurisdictional authorities about bridge/tunnel height restrictions along haul routes and comply with all provisions of Haul Route and other Permits.

3. Parking: Contractor, Contractor's employees, subcontractors and suppliers must park within the Project site, within the limit of work and agreed to in a staging plan. Use of street parking in the adjacent neighborhood is not allowed. Contractor shall obey all parking requirements and shall coordinate directly with any local agency should public posted parking be required so as not to impact the progress of work due to limited on-site parking/laydown/staging space.
4. Existing Trees: No parking or staging of materials is allowed within the dripline of existing trees.
5. Neighboring private property: MRCA does not authorize access onto adjoining private properties, except as noted above for easements. All work shall be performed within the limit of work as shown on the drawings.
6. Access Roads: The Contractor and Owner will agree on the roads to be used for debris transport. The Contractor shall not operate any equipment on roads not approved by the Owner.

D. Public Access to Other Facilities

Project locations are all located in a disaster area and closed to the public. Coordinate any necessary temporary closures with MRCA, or other managing entity, in advance.

1. Contractor is responsible for securing perimeter of Work area which may contain Contractor's property and/or hazardous conditions; however perimeter construction fencing is not mandatory.
2. All use of public trails and parkland by workers, suppliers, and subcontractors is subject to posted agency rules and notices.

E. Contractor shall:

1. Coordinate on access to the Project sites and monitor specific work areas.
2. Secure Work areas with locking devices as necessary.
3. Assume custody and control of Owner property, both fixed and portable, remaining in existing facilities vacated during the Work.
4. Not use or allow anyone other than Owner's employees to use facility equipment.

F. Acceptance of Site

Contractor shall accept the site and the character of the work as they exist on the first day of work under this Contract.

G. Survey of Site

Contractor shall verify all the dimensions on the drawings and shall report to MRCA or its representative any discrepancy before proceeding with related work. Contractor shall perform all Survey and Layout work under this Contract.

H. Maintenance of Existing Plantings

Contractor shall protect and maintain all existing trees and plantings from the first day of work under this Contract to acceptance.

I. Not in Contract

Items shown on Contract drawings, but marked N.I.C., are not included in this Contract.

J. Limits of Work

Limits of work shall be the legal property boundaries unless modified by Contract limit lines indicated on the Plans or as noted otherwise.

K. Cleanup of Site

Contractor shall keep the project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Contractor. At the conclusion of each work day, Contractor shall leave the project site in a clean and safe condition, with materials, tools and equipment secured and all rubbish removed or contained in appropriate receptacle. All excess dirt, waste material, rubbish, tools, equipment, machinery and surplus materials shall be removed by Contractor from the project site at the completion of Work.

1.5 WORK RESTRICTIONS

A. Work Restrictions, General

Comply with restrictions on construction operations.

1. Comply with limitations on use of public streets and with other requirements of authorities having jurisdiction.

B. On-Site Work Hours

Limit work to normal business working hours of 7:00 a.m. to 4:00 p.m., Monday through Friday, and 8:00 a.m. to 6:00 p.m., Saturday with prior approval from the Owner. No construction shall be permitted on Sundays or federal holidays. Construction using any equipment that makes loud noises that would disturb persons in nearby residences (including the operation, repair, or servicing of construction equipment and the jobsite delivering of construction materials) shall be limited to the hours of 8:00 AM to 7:00 PM, Monday through Friday, and from 9:00 AM to 6:00 PM on Saturday.

C. Existing Utility Interruptions

Do not interrupt utilities serving facilities occupied by Owner or others unless permitted under the following conditions and then only after providing temporary utility services according to requirements indicated:

1. Notify Owner not less than two working days in advance of proposed utility interruptions.
2. Obtain Owner's written permission before proceeding with utility interruptions.

D. Site Restrictions

The following are prohibited on Project site at all times:

1. Smoking. No smoking is allowed in the project site premises.
2. Fires
3. Use of alcohol and controlled substances
4. Possession of firearms or dangerous weapons
5. Recreational sound devices, e.g. radios, portable speakers, car stereos, etc.

1.6 PROJECT OPERATION CONDITIONS AND MITIGATION MEASURES

A. Mitigation Measures

Contractor to comply with all of the Mitigation Measures contained within the contract. Contractor is solely responsible for obtaining a copy of the mitigation measures and the implementation of all mitigation measures.

B. Noise

Muffled construction equipment shall be used whenever possible. Rubber-tired construction equipment rather than track equipment shall be used whenever possible. There shall be no running equipment or site noise generated during non-working hours.

C. Air Quality

The following procedures are required:

1. All exposed soils shall be watered at least one (1) time daily but no less than required for proper dust control in accordance with the SWPPP General Permit.
2. All vehicles traveling on unpaved areas shall not exceed 15 miles per hour.
3. All grading operation shall be suspended when wind speeds exceed 25 miles per hour or are forecast to exceed 25 miles per hour.
4. All trucks hauling dirt, sand, soil, or other loose material shall be covered.
5. All construction equipment shall be properly tuned and maintained.
6. Low-emission construction equipment (methanol, gasoline, electric, natural gas) shall be utilized, as feasible.
7. All construction equipment shall be turned off when not in use for extended periods of time.
8. No more than six (6) pieces of heavy construction equipment shall operate at the same time.
9. If more than five (5) pieces of heavy construction equipment are operating simultaneously, no more than ten (10) pieces of stationary construction equipment shall operate at the same time.
10. All construction crews shall comply with all OSHA requirements to maximize the safety of the project and personnel.
11. Deliveries of construction materials and haul truck trips shall be scheduled during non-peak hours, if possible.

D. Archaeological Resources

If archaeological or paleontological resources, including human remains, are discovered during construction the following mitigation measures are required:

1. All construction shall be suspended immediately and the Owner must be notified. Owner shall employ a licensed archaeologist or paleontologist, and/or Native American representative and County coroner, as appropriate, to determine the significance of the find. If the expert consultant(s) determines that the find is unique or of other importance, all grading shall be suspended indefinitely, and the site shall be surveyed for additional resources, unless in the expert opinion of the consultant the find is isolated, in which case construction need be suspended only in the immediate area surrounding the find. If the resources discovered are unique or important, construction in the affected area shall not resume until they have been catalogued, stabilized, and/or removed, as described below.

2. All handling of archaeological resources and human remains, if discovered during construction, shall be in accordance with the CEQA Guidelines, Section 15064.5.
3. Any unique or important paleontological resources, if discovered during construction, shall be removed by a licensed paleontologist prior to resuming construction and donated to a museum or other appropriate entity.

E. Grading

Grading shall be confined to areas indicated on the Contract Documents. No excavations shall be made into the canyon slopes.

F. Hazards and Hazardous Materials

The following procedures are required:

1. All crews will be required to have operable communication devices at all times to contact emergency response units in the event of an emergency.
2. Any hazardous materials produced as a result of an accident or encountered for any other reason shall be handled in accordance with applicable federal, state, and local regulations to reduce and avoid risks to public health.

G. Biology

The following procedures are required:

1. MRCA shall retain a qualified biologist to survey the project site for nesting bird species no more than five (5) days prior to the commencement of construction, if the period of construction is expected to overlap the nesting season.

1.7 PROJECT REQUIREMENTS

A. Noise/Dust Concerns

Contractor shall utilize all available means to prevent generation of unnecessary noise and maintain noise levels to a minimum. When required by the Owner, Contractor shall immediately discontinue noise-generating activities and/or provide alternative methods to minimize noise generation. See Section 1.6.

B. Safety/Security Considerations

1. In the event of an emergency, dial 911. To contact the supervising ranger, dial 310-456-7049 and provide your name, your return phone number, nature of the problem and when it occurred.
2. Project site and surrounding area is in and around native habitat. Hazards commonly found in such areas in southern California include but are not limited to: Rattlesnakes, Poison Oak, Ticks. Contractor shall be responsible for informing all workers, suppliers and subcontractors of these and all other potential hazards, precautionary measures, and appropriate responses if encountered.
3. Project site is located in a disaster area where vandalism, theft, and other criminal activities may occur. Contractor is responsible for precautionary measures, including but not limited to securing perimeter of Work area which

may contain Contractor's property and/or hazardous conditions. Owner is not responsible for any stolen, vandalized, or damaged items. The cost of all such precautionary measures, not limited to the daily transportation of equipment, materials, and/or tools to site secured by Contractor, shall be presumed to be included in the base bid.

C. Salvageable items/Recycling

None.

D. Special Resource Protection

Every precaution will be taken to prevent further damage to vegetation which is not deemed hazardous. Smoking is prohibited.

E. Construction Staging

Staging area must be within Project site and limit of disturbance as shown on drawings. Contractor shall submit a Site Logistics Plan in accordance with the General Conditions prior to commencing work for Owner approval. Staging plan shall indicate tree protection measures subject to Owner's approval. Contractor shall store all materials, equipment and tools within the staging area, or relocate items to a location secured by Contractor outside of work hours.

F. Temporary Utilities

Contractor is responsible for obtaining, maintaining, and paying for all utilities utilized during the course of construction. The cost of providing temporary utilities is assumed to be included in the bid price for the Work. The project site is in the disaster area and there are no existing water, power, or low voltage lines that are anticipated to be available for temporary use. The Contractor shall therefore plan for interim utilities (e.g. water trucks, generators, etc.) until temporary services are provided from local utility providers.

G. Logistics/Traffic Control Considerations

Contractor may not impede traffic without prior approval of the applicable transportation agency. Contractor shall obtain and pay for any traffic control as required to comply with all city ordinances. The cost of traffic control is assumed to be included in the bid price for the Work.

1. Deliveries: Contractor shall notify MRCA forty-eight (48) hours in advance of delivery of materials and/or equipment for site access and coordination. Contractor shall coordinate with MRCA to avoid impact to the project site and park operations during large deliveries. All costs related to delivery, service, unloading, storage and pickup shall be included in Contractor's base bid. MRCA staff will not assist with unloading materials or equipment, nor shall MRCA's equipment be used for unloading.

H. Special Signage Requirements

MRCA may post signs at entrance to Project site. Contractors shall maintain such signs in good condition and free of graffiti.

I. Constraints on Means and Methods

None.

J. Submittals on Critical Path

None.

K. Long Lead Items/Material and Equipment Availability

None.

L. Special Delivery Requirements

The project locations are in, and around active debris removal activities conducted by third-party organizations. This work requires coordination in advance to ensure no activities are delayed or jeopardized.

M. Sole Source or MRCA-furnished Materials and Equipment

None.

N. Temporary Systems Needed

None.

O. Training/Certifications Requirements

Refer to technical specifications for any additional training requirements.

P. Retention

5% will be withheld from each progress payment request.

1.8 SPECIFICATION AND DRAWING CONVENTIONS

A. Specification Content

The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:

1. Imperative mood and streamlined language are generally used in the Specifications. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.
2. Specification requirements are to be performed by Contractor unless specifically stated otherwise.

B. Division 01 General Requirements

Requirements of Sections in Division 01 apply to the Work of all Sections in the Specifications.

C. Drawing Coordination

Requirements for materials and products identified on Drawings are described in detail in the Specifications. One or more of the following are used on Drawings to identify materials and products:

1. Terminology: Materials and products are identified by the typical generic terms used in the individual Specifications Sections.
2. Abbreviations: Materials and products are identified by abbreviations scheduled on Drawings.
3. Keynoting: Materials and products are identified by reference keynotes referencing Specification Section numbers found in this Project Manual.
4. Order of Precedence: If there is a conflict between the Contract Documents, Drawings and Specifications, the most stringent condition shall apply.

END OF SECTION 010000



MOUNTAINS RECREATION & CONSERVATION AUTHORITY
Los Angeles River Center and Gardens
570 West Avenue Twenty-six, Suite 100
Los Angeles, California 90065
Phone (323) 221-9944 Fax (323) 221-9934

01 00 01 NOTICE INVITING BIDS

Project Name: **Palisades Fire Structural Debris Removal Services**

Type of Work:

This project includes but is not limited to: The furnishing of all labor, materials, equipment, services and incidentals necessary for Work, as indicated in the Contract Documents, for Palisades Fire Debris Removal Services project, taking place at all the locations identified listed below. Work includes but is not limited to the collection, removal, segregation, reduction, recycling, and disposal of the debris caused by the disaster. The Contractor shall not be paid to remove, process or dispose of debris that is unrelated to disaster damage, without written direction from the Owner. Each debris type (vegetative, construction and demolition, sediment/mud/rock, white goods, and vehicles) shall be hauled and managed separately. The work will be performed in accordance with the plans, specifications and special provisions for the project. The contract is required to be completed within the time stated in the Contract Documents.

Site Address:

- Temescal Gateway Park Retreat and Conference Center, 15601 W Sunset Blvd, Pacific Palisades, CA 90272.¹
- Temescal Ridge Trailhead, 16701 Vía La Costa, Pacific Palisades, CA 90272.
- Carbon Beach East Accessway, 22132 Pacific Coast Hwy, Malibu, CA 90265.¹
- Via La Costa Accessway (La Costa Beach), 21554 Pacific Coast Hwy, Malibu, CA 90265.
- Las Flores Beach Accessway, 20802 Pacific Coast Hwy, Malibu, CA 90265.
- Moonshadows Accessway (Big Rock Beach). 20340 Pacific Coast Hwy, Malibu, CA 90265.
- Miramar Coastal Overlook, 19602 Pacific Coast Hwy, Malibu, CA 90265
- Las Tunas Beach Accessway, 19016 Pacific Coast Hwy, Malibu, CA 90265

The Mountains Recreation and Conservation Authority, a local public agency exercising joint powers of Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District pursuant to Section 6500, *et seq.* of the Government Code, requests bids for the above referenced project. At the time of bid submission, and at all times during the term of the contract, the Contractor shall hold a Class A or Class B license with Hazardous Substance Removal Certification (HAZ) or the specific combination of C-21, C-12 with a HAZ certificate contractor's license issued by the State of California and be registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Failure to be so licensed may result in legal penalties. The successful Contractor and their subcontractors shall immediately obtain business licenses from the City or County in which the work is to be performed if necessary, and fees for this will be paid by the Contractor.

¹ Location of meeting point for mandatory site visit.

Schedule:

Sealed bids will be accepted until 1:00 p.m. on April 31, 2025 in the main office of the Mountains Recreation and Conservation Authority at 570 W. Avenue 26, Suite 100, Los Angeles, CA, 90065 and will be opened and publicly read at that time. Bid documents may be obtained by contacting Sofia Aleman, Chief of Park Development via email at sofia.aleman@mrca.ca.gov.

Bidders must register at the mandatory Bidder's conference. All potential bidders shall attend this pre-bid meeting to become registered. Failure to do so may result in rejection of bid. Prospective bidders must register in order to receive notice of Addenda.

1. Thursday April 17, 2025 @ 12:00-2:00 PM
Location: 22132 Pacific Coast Hwy Malibu, CA 90265
2. Monday, April 21, 2025 @ 1:00-3:00PM
Location: 15601 W Sunset Blvd, Pacific Palisades, CA 90272

All Requests for Interpretation and questions should be submitted to Sofia Aleman, Chief of Park Development via email at sofia.aleman@mrca.ca.gov by 5:00 p.m. on April 23, 2025.

Additional Requirements:

For all contracts exceeding \$25,000, the successful bidder will be required to furnish a performance bond in the amount of 100 percent of the contract price, and a payment bond in the amount of 100 percent of the contract price, both in a form satisfactory to the Owner. All bonds must be issued by a California admitted surety insurer. The substitution of securities for withheld contract funds is permitted to the extent provided by California and federal law, if applicable.

The provisions of the California Labor Code will be incorporated in and govern this contract. The successful bidder will be required to pay not less than the general prevailing rate of per diem wages as determined by the Department of Industrial Relations, copies of which are on file with the Mountains Recreation and Conservation Authority and will be made available upon request. This project is a public works project, as defined in Labor Code Section 1720, and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 CCR sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. This project is also subject to federal Davis-Bacon wages. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. MRCA has adopted a Labor Compliance Program, which states that construction contracts under \$25,000 and maintenance contracts under \$15,000 will not be subject to prevailing wages.

The MRCA reserves the right to reject any and all bids and to waive any informality or irregularity in any bid received.

Published:
Daily News, April 12, 2025

END OF SECTION

01 00 02 - INSTRUCTIONS TO BIDDERS

A. RECEIPT AND OPENING BIDS

1. The Mountains Recreation and Conservation Authority (herein called MRCA) invites written bids for the Palisades Fire Structural Debris Removal Services taking place at multiple locations, including, 15601 W. Sunset Blvd, Pacific Palisades, CA 90272, hereinafter referred to as ("Project"). All bids must be submitted in sealed envelope addressed to:

Mountains Recreation and Conservation Authority
570 West Avenue 26, Suite 100
Los Angeles, CA 90065
Attention: Sofia Aleman

bearing on the outside the name of the bidder, address and marked "Bid for Palisades Fire Structural Debris Removal Services."

2. Bids are due in the MRCA's office at the time and date set in the Notice Inviting Bids. Bids will be opened publicly at that time. Late bids will not be accepted.
3. The bids will be reviewed by the MRCA and action taken within ninety (90) days of receipt of bids. A Notice of Intent to Award Bid will be distributed to bidders within that time. Bid will be awarded to the lowest responsive and responsible bidder as determined by MRCA, for the base bid.

B. QUALIFICATIONS

1. At the time of bid submission, and at all times during the term of the contract, the Contractor shall hold a **Class A or Class B license with Hazardous Substance Removal Certification (HAZ)** or the specific combination of C-21, C-12 with a HAZ certificate contractor's license issued by the State of California.
2. The bidder must have attended and signed-in at the mandatory pre-bid conference.

C. BIDDER'S CONFERENCE

1. On site bidder's conference will be held at the date and time specified in the Notice Inviting Bids. All potential bidders shall attend the pre-bid meetings to cover all locations under this invitation. Failure to do so shall result in the rejection of bid.
2. If a second site conference is scheduled, potential bidders who attended the first site conference do not need to attend if the scope of the project has not changed.

D. PREPARATION OF BID

1. Prospective bidders must register with MRCA in the manner and by the time and date stated in the Notice Inviting Bids.

2. Bids must be submitted on the prescribed forms. All blank spaces for bid prices must be filled in, in blue or black ink, in both figures and words where indicated.
 - i. In case of discrepancy, the amount written in words shall govern.
 - ii. Interlineations, alterations and erasures must be initialed by the signer of the bid on all pages submitted.
 - iii. If there is no bid item on the form for a particular item of work, full compensation for such work shall be considered as included in the prices bid for other items of work.
 - iv. In case of unintelligible figures, ambiguities or discrepancies between unit costs, item subtotals, and/or total amount bid, and the value of items therefore cannot be calculated, the bid shall be found to be irregular and rejected as non-responsive.
 - v. In case of discrepancy between total cost of items listed and the total base bid amount, the amount listed as total base bid amount on page 1 of the Bid Submission Form shall govern.
3. Conditional bids will not be accepted except for specific requested alternates.
4. The MRCA reserves the right to reject any bid improperly prepared or which does not contain all information required as indicated.
5. If required, permit fees will be paid by Contractor directly at the time the Contractor pulls the permit and reimbursed by Owner. All other fees shall be included in the contract price for this work.

E. BID ALTERNATES

1. If the Owner has included additive/deductive alternates which require all bidders to price as part of their bid, the following method will be used to determine the lowest bidder in accordance with Public Contract Code Section 20103.8:

The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

Pursuant to Public Contract Code Section 20103.8, the selection process selected does not preclude Owner from using any of the additive or deductive alternates from the Contract after the lowest responsible responsive bidder has been determined.

F. BIDDER'S CHECK OR BOND

1. Each proposal must be accompanied by a deposit equal to ten (10) percent or more of the amount of the Base Bid, either by certified or cashier's check or by bid

bond drawn in favor of Mountains Recreation and Conservation Authority. The successful bidder will enter into an agreement with MRCA and shall furnish all bonds specified in the agreement. If the successful bidder fails to enter into the contract awarded or fails to supply bonds and certificates or insurance as specified in Standard Agreement within ten (10) days of award, then the deposit shall be forfeited to the MRCA.

2. If the successful bidder executes the contract and supplies the specified payment and performance bonds and insurance certificates within ten (10) days of award, the check or bond accompanying the successful bid will be returned to the bidder. All checks and bonds accompanying rejected bids will be returned to the respective bidders upon rejection.

G. LIST OF SUBCONTRACTORS AND SUPPLIERS

1. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code Sections 4100 *et seq.*) and any amendments thereof, each Bidder shall set forth: (a) the name, license number, and location of the place of business of each subcontractor who will perform work or labor or render service to the Trade Contractor, who will perform work or labor or work or improvement to be performed under this Trade Contract, or a subcontractor licensed by the State of California who, under subcontract to the Trade Contractor, specially fabricates and installs a portion of the work or improvements according to detailed Drawings contained in the Plans and Specifications in an amount in excess of one-half of one percent of the Trade Contractor's total bid; and (b) the portion and description of the work which will be done by each subcontractor under this Act. The Trade Contractor shall list only one subcontractor for each such portion as is defined by the Trade Contractor in this bid. All subcontractors shall be properly licensed by the California State Licensing Board.

If a Trade Contractor fails to specify a subcontractor, or if a Trade Contractor specifies more than one subcontractor for the same portion of work to be performed under the Contract in excess of one-half of one percent of the Trade Contractor's total bid, the Trade Contractor shall be deemed to have agreed that the Trade Contractor is fully qualified to perform that portion, and that the Trade Contractor alone shall perform that portion of the Work.

No Trade Contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow the relevant portion of the work to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the Trade Contractor's total bid where the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act.

2. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the Trade Contractor's total bid where no subcontractor was designated

in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record, of the authority awarding this Contract setting forth the facts constituting the emergency or necessity.

3. Additionally, the bidder shall identify the dollar value of each subcontract and upon execution of a contract with MRCA, the successful bidder shall submit copies of all agreements with subcontractors and suppliers to MRCA.
4. MRCA reserves the right to disapprove the use of any such proposed subcontractor or supplier and in such an event, the bidder shall submit another subcontractor or supplier in like manner within the time specified by the MRCA. These submittals and approvals shall be repeated if any changes are made during the course of construction.

H. ADDENDA AND INTERPRETATIONS

1. No interpretation of the meaning of the plans, specifications, or other Contract Documents will be made to the bidder orally. Every request for such interpretation should be in writing addressed to the MRCA or MRCA's designated representative.
2. All requests for interpretation and questions must be submitted to MRCA in the manner and by the date and time stated in the Notice Inviting Bids.
3. All such interpretations and any supplemental instruction will be in the form of written addenda to the specifications.
4. These addenda will be distributed to all registered prospective bidders. All addenda so issued shall become part of the Contract Documents. When possible, addenda will be e-mailed to bidders with return receipt.
5. Bidder shall ascertain prior to submitting a bid that the bidder has received all Addenda issued, and Bidder shall acknowledge their receipt in the bid.
6. No substitutions will be considered prior to award of Contract.

I. OBLIGATION OF BIDDER

1. Each bidder must inform themselves fully of the conditions relating to the construction and labor under which the work will be performed. Failure to do so will not relieve a successful bidder of their obligation to furnish all material and labor necessary to carry out the provisions set forth in the bid. Each bidder will be presumed to have inspected the site, and to have read and to be thoroughly familiar with the plans, specifications, and other contract documents, including all addenda.

- i. Material quantities, including but not limited to earthwork, are provided on the plans for general permitting and plan check purposes only. The Contractor is responsible for all import/export quantities and materials required to perform the work in accordance with the Contract Documents.
2. The failure and omission of any bidder to receive any form, instrument, or document shall in no way relieve any bidder from any obligation in respect to this bid.
3. Attached hereto is the Owner's Standard Agreement. At the time of the awarding of the bid, each bidder will be presumed to have read the document and accept the terms and conditions as specified, including all attached exhibits.
4. Insofar as possible, the Contractor, in carrying out their work, must employ such methods or means as will not cause any interruption or interference with the work of any other Contractor.
5. The MRCA will require that the successful bidder submit a complete breakdown of their bid within a time specified by MRCA.

J. TIME OF COMPLETION AND LIQUIDATED DAMAGES

1. Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" issued by MRCA and to fully complete improvements within the term of the agreement and according to the Schedule of Work. Bidder must agree also to pay liquidated damages as specified in the agreement for each consecutive calendar day thereafter.

Liquidated damages amount: \$ 250.00 per day

K. RULES AND LAWS IN EFFECT

1. Bidder's attention is directed to the following factors in this project:
 - a. Competitive bidding is required.
 - b. Change orders must be approved.
 - c. All Federal, State or other laws, orders, rules and regulations of all authorities having jurisdiction over construction work in the locality of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full, including compliance with the Civil Rights Acts of 1964 and Executive Order no. 11246.
 - d. The bidder represents and warrants that they, he, she, or the officers, directors, and/or employees of bidder are not related by blood or marriage to any member of

the governing boards of the Santa Monica Mountains Conservancy, the Santa Monica Mountains Conservancy Advisory Committee, the Mountains Recreation and Conservation Authority, or any other joint powers authority for which the Santa Monica Mountains Conservancy is a constituent member, or to any officer, director or staff member that has discretion over the contract of any of the aforesaid public agencies. "Related by blood or marriage" is defined as being a parent, child (including step children), sibling, grandparent, grandchild, aunt, uncle, niece, nephew, spouse, domestic partner, father-in-law, mother-in-law, sister-in-law or brother-in-law. The MRCA reserves the right to immediately cancel any contract entered into if it discovers a breach of this warranty and representation. Bidder shall be liable for all damages sustained by the MRCA as a result of the breach.

L. BID PROTEST

1. Non-responsive bidders are not entitled to refute the decision of the MRCA. A non-responsive bidder will be given the opportunity to provide written evidence and argument to refute the MRCA's decision.
 - a. The bid protestor must submit a bid protest accompanied with written evidence and argument refuting the MRCA's decision by 4:00 p.m. on the fifth calendar day from the date of the Notice of Intent to Award Bid, to the address for bid submittals specified in the Notice Inviting Bids. If the bid protestor does not meet this deadline by timely submitting written evidence and argument with the bid protest, the party initially designated to receive the award will be declared as the lowest responsive and responsible bidder and MRCA will immediately award the contract to that party.
 - b. In the event of receipt of a timely bid protest accompanied with written evidence and argument, the MRCA Project Manager and a committee appointed by the MRCA will consider the written evidence and argument to determine the merits of the protest and determine which party will be declared the lowest responsive and responsible bidder. The MRCA Project Manager and committee will make such determination within a reasonable time but with not more than seven (7) calendar days from the date MRCA received such evidence and argument. Thereafter, MRCA will send its Notice of Decision to the bid protestor and award the contract to the lowest responsive and responsible bidder. The right to extend any deadline as set forth in this section is within the sole discretion of the MRCA.

M. VALUE ENGINEERING

1. Notwithstanding any other provision of law, the MRCA may use a negotiation process if it finds that one or more of the following conditions exist:
 - a. The business need, purpose or project related to a bid or contract can be further defined as a result of a negotiation process.

- b. The business need, purpose or project related to a bid or contract is known by the MRCA, but a negotiation process may identify different types of solutions to fulfill this need.
- c. The complexity of the need suggests a bidder's costs to prepare and develop a solicitation are extremely high.
- d. The business need, purpose or project related to procurement is known by the MRCA but negotiation is necessary to ensure that the MRCA is receiving the best value or the most cost-efficient goods and services.
- e. When it is in the best interests of the MRCA, the MRCA may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods and services.
- f. If the MRCA determines that such action is necessary, the MRCA will notify the low bidder of its intention to negotiate the contract after award of bid. Award of bid shall be made according to standard MRCA standards and practices.

N. INSURANCE

1. The successful bidder must provide proof of all required insurance as specified in the Agreement and herein.
2. General Liability: \$1,000,000 per occurrence; \$2,000,000 aggregate.
3. Automobile: \$1,000,000 per occurrence of bodily injury or property damage.
4. Workers Compensation: As required by California law.
5. Builder's Risk Insurance: In addition to the insurance specified in the Agreement, the Contractor will be required to carry a Builder's Risk policy. Such policy shall cover all risks of direct physical loss, damage or destruction to the work equal to the Contract Amount.
6. Environmental/Pollution Liability Insurance will be required under a separate policy with the same limits required for General Liability and Automobile Liability, if either such policy excludes liability for bodily injury, property damage and environmental damage resulting from pollution, asbestos, environmental damage or resultant cleanup, repair or restoration that occurs as a result of work or services to be performed under this agreement. Coverage shall be provided for both work performed as well as transportation and proper disposal of hazardous materials
7. The Contractor will be responsible for the deductible and documentation for any and all claims made on all policies.
8. The following entities shall each be named as Additional Insured:
 - i. Mountains Recreation and Conservation Authority
 - ii. Conejo Recreation and Park District
 - iii. Rancho Simi Recreation and Park District
 - iv. Santa Monica Mountains Conservancy
 - v. State of California

END OF SECTION

01 00 03 - BID SUBMITTAL CHECKLIST

The following documents must be submitted with the bid package, completed in full and signed as required:

- Bid Submission Form and Schedule of Bid Items by Location (See 01 00 04)
- Itemized Breakdown of Price on Contractor's standard form (See 01 00 04)
- Designation of Subcontractors/Suppliers and Bid Value on the Bid Submission Form Provided to include name, license number, address, description of work or supplies to be provided, and dollar value of each subcontract. (See Instructions to Bidders 01 00 02). The Form shall be signed by a representative of the bidder.
- Addenda Receipt on Contractor's letterhead (See Instructions to Bidders)
- Bid Bond (See Instructions to Bidders). Bidders may use surety's bond form.
- Certificates of Insurance for all required policies (See Standard Agreement)
- Completed Proposer Bidder Statistical Information Form
- Contractor Questionnaire
- Reviewed or audited financial statement (see Questionnaire #4)
- Notarized statement from admitted surety insurer (see Questionnaire #5)
- List and reference information for recent construction projects completed (Contractor Questionnaire Part III)

END OF SECTION

01 00 04 - BID SUBMISSION FORM AND SCHEDULE OF BID ITEMS

BID FORM FOR: Palisades Fire Structural Debris Removal Services

A PROJECT OF: MOUNTAINS RECREATION AND CONSERVATION AUTHORITY
570 West Avenue 26, Suite 100
Los Angeles, CA 90065

BID FROM: _____
(Name of Bidder)

(Address)

(Telephone)

DATE SUBMITTED: _____

A. Base Bid: _____ \$ _____
(words) (figures)

B. Owner Allowance: twenty thousand \$ 20,000.00
(words) (figures)

Total Price (A+B): _____ \$ _____
(words) (figures)

Bidder understands and agrees that there is an allowance entitled Owner Allowance within the Total Price Submitted as described in the Special Conditions and listed above.

Length of Work: 45 from Notice to Proceed.
(days)

The Bidders must submit a budget showing an itemized breakdown of price to include, but is not limited to, employee wages, materials and supplies, equipment, dump fees, permit fees, etc. All listed amounts must correspond to the submitted bid amount.

Bidder must also complete the **Schedule of Bid Items by Location** in order for a bid to be responsive.

Pursuant to, and in compliance with, the plans and/or specifications relating hereto, the undersigned contractor hereby proposes and agrees to perform, within the Contract Time stipulated, the Work, including all of its component parts; and to provide and furnish any and all labor, materials, tools, apparatus, facilities, expendable equipment and all utility and transportation services necessary or proper for, or incidental to, the complete construction, including all trades as required by, and in strict accordance with, the applicable provisions of plans and specifications in a workmanlike manner for the

BIDDER NAME: _____
BID SUBMISSION FORM – Structural Debris Removal Services

project located at multiple site locations, including 15601 W. Sunset Blvd. Pacific Palisades, CA 90272, and acknowledges receipt of all addenda issued by the Mountains Recreation and Conservation Authority distributed prior to the date the bids were due, whether received by the undersigned.

The undersigned contractor recognizes the relations of trust and confidence that will be established between himself and the MRCA by a contract; if awarded to him, and agrees in such an event that the Drawings and other Contract Documents shall be deemed to be the "instruments of service" and that he will use the documents for the sole purpose of completion of the contract in the best and soundest manner and in the most expeditious and economical way consistent with the best interest of the MRCA. The MRCA reserves the right to reject any and all bids, to accept other than the lowest bid, and to waive any informality in the bids.

The undersigned as bidder declares that he/she has carefully examined the location of the proposed work, that he/she has examined the Contract Documents and read the accompanying Instructions to Bidders, and hereby proposed and agrees, if the proposal is accepted, to furnish all materials and do all work required to complete the said work in accordance with the said Contract Documents in the time and manner therein prescribed for the price set forth in the following schedule. The bidder is responsible for all quantity take offs and accuracy of those calculations. The undersigned has checked all words and figures inserted in the bid submittal, and understands that the MRCA will make no allowance for any error or omission on the part of the undersigned.

The bidder represents and warrants that they, he, she, or the officers, directors, and/or employees of bidder are not related by blood or marriage to any member of the governing boards of the Santa Monica Mountains Conservancy, the Santa Monica Mountains Conservancy Advisory Committee, the Mountains Recreation and Conservation Authority, or any other joint powers authority for which the Santa Monica Mountains Conservancy is a constituent member, or to any officer, director or staff member with discretion over the contract of any of the aforesaid public agencies. "Related by blood or marriage" is defined as being a parent, child (including step children), sibling, grandparent, grandchild, aunt, uncle, niece, nephew, spouse, domestic partner, father-in-law, mother-in-law, sister-in-law or brother-in-law. The MRCA reserves the right to immediately cancel any contract entered into if it discovers a breach of this warranty and representation. Bidder shall be liable for all damages sustained by the MRCA as a result of the breach.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Authorized Signature _____

Name: _____

Title: _____

State Contractor's License Number and Classification Designation _____

Executed this ____ day of _____, 2025 at _____, California.

BIDDER NAME: _____

LUMP SUM BASE BID:

\$

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 ,

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 ,

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 .

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(Place figures in appropriate boxes)

ALTERNATES: None

LIST OF SUBCONTRACTORS AND SCHEDULE OF BID VALUES:

Bidders shall complete and submit a Designation of Subcontractors and Bid Value Form listing the description of work, name, location of place of business, license type and bid value for each subcontractor equivalent to the awarded subcontractor amount similar to the form below.

Additionally, for **all self-performed work over 5% of the contract value, the Bidder shall list the portion of work and the equivalent value.** It is not acceptable to list "Self Performed" work as a single line item. Each definable feature of work that is being self-performed must be listed separately. An electronic version will be provided to all registered bidders.

DESIGNATION OF SUBCONTRACTORS AND BID VALUE FORM

Description & Portion of Work	Name of Subcontractor	Location & Place of Business	License Type and Number)	Contract Value

Proper Name of Bidder: _____
 Date: _____
 Name: _____
 Signature of Bidder Representative: _____
 Address: _____
 Phone: _____

SCHEDULE OF BID ITEMS BY LOCATION:

Bidders shall complete a breakdown of base bid by specific location or area within a location for the areas of Work listed below.

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	Temescal Gateway Park			\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
2	Temescal Ridge Trailhead			\$
3	Coastal Access Points			
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
			LUMP SUM	\$
TOTAL BASE BID AMOUNT				\$

Notes:

- A. Total price shall include the removal of debris piles adjacent to individual structures. Includes construction debris and soil and vegetation from subsequent debris flows

Authorized Signature: _____

Printed Name: _____

Date: _____

**NONCOLLUSION DECLARATION TO BE EXECUTED BY BIDDER
AND SUBMITTED WITH BID**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Signature _____

OBLIGATION TO SECURE WORKERS' COMPENSATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Signature _____

END OF SECTION



MOUNTAINS RECREATION & CONSERVATION AUTHORITY
 Los Angeles River Center and Gardens
 570 West Avenue Twenty-six, Suite 100
 Los Angeles, California 90065
 Phone (323) 221-9944 Fax (323) 221-9934

CONTRACTOR QUESTIONNAIRE

PROJECT: Palisades Fire Structural Debris Removal Services

BIDDER INFORMATION

Firm Name: _____ Check One: Corporation
 (as it appears on license) Partnership
 Sole Proprietor

Contact Person: _____

Address: _____

Phone: _____ Fax: _____

Tax ID: _____ Email: _____

Contractor's License(s) Information:

Name of license holder: _____

License Classification and Code: _____

License Number: _____

Date Issued: _____

Expiration Date: _____

If firm is a sole proprietor or partnership:

Owner(s) of Company _____

* * * * *

I, the undersigned, certify and declare that I have read all the following answers to this qualification questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Dated: _____
 (Name)

PART I. ESSENTIAL REQUIREMENTS FOR QUALIFICATION

Contractor will be immediately disqualified if the answer to any of questions 1 through 5 is “no.”¹

Contractor will be immediately disqualified if the answer to any of questions 6, 7, 8 or 9 is “yes.”² If the answer to question 8 is “yes,” and if debarment would be the sole reason for denial of qualification, any qualification issued will exclude the debarment period.

1. Contractor possesses a valid and current California Contractor’s license for the project for which it intends to submit a bid.
 Yes No
2. Contractor has a liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.
 Yes No
3. Contractor has current workers’ compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code § 3700 *et. seq.*
 Yes No Contractor is exempt from this requirement, because it has no employees
4. Have you attached your latest copy of a reviewed or audited financial statement with accompanying notes and supplemental information.³
 Yes No

NOTE: A financial statement that is not either reviewed or audited is not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

5. Have you attached a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) and authorized to issue bonds in the State of California, which states that your current bonding capacity is sufficient for the project for which you seek qualification?
 Yes No

NOTE: Notarized statement must be from the surety company, not an agent or broker.

6. Has your contractor’s license been revoked at any time in the last five years?
 Yes No

¹ A “no” answer to Question 4 will not be disqualifying if the contractor is exempt from complying with Question 4, for reasons explained in footnote 3.

² A contractor disqualified solely because of a “Yes” answer given to question 6, 7, or 9 may appeal the disqualification and provide an explanation of the relevant circumstances during the appeal procedure.

³ Public Contract Code section 20101(e) exempts from this requirement a contractor who has qualified as a small business pursuant to Government Code section 14837(d)(1), if the bid is “no more than 25 per cent of the qualifying amount provided in section 14837(d)(1).” As of January 1, 2001, the qualifying amount is \$10 million, and 25 per cent of that amount, therefore, is \$2.5 million.

7. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?
 Yes No

8. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code §1777.1 or Labor Code §1777.7?
 Yes No

If the answer is "Yes," state the beginning and ending dates of the period of debarment: _____

9. At any time during the last five years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?
 Yes No

PART II. ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

A. Current Organization and Structure of the Business

For Firms That Are Corporations:

1a. Date incorporated : _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name	Position	Years with Co.	% Ownership	Social Security #

1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or 10 per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

For Firms That Are Partnerships:

1a. Date incorporated : _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each partner who owns 10 per cent or more of the firm.

Name	Position	Years with Co.	% Ownership	Social Security #

1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

For Firms That Are Sole Proprietorships:

1a. Date of commencement of business. _____

1b. Social security number of company owner. _____

1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

For Firms That Intend to Make a Bid as Part of a Joint Venture:

- 1a. Date of commencement of joint venture. _____
 1b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on the project:

Name of firm	% Ownership of Joint Venture

B. History of the Business and Organizational Performance

2. Has there been any change in ownership of the firm at any time during the last three years?

NOTE: A corporation whose shares are publicly traded is not required to answer this question.

Yes (explain on a separate signed page) No

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

NOTE: Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes (explain on a separate signed page) No

4. Are any corporate officers, partners or owners connected to any other construction firms?

NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes (explain on a separate signed page) No

5. State your firm's gross revenues for each of the last three years:

6. How many years has your organization been in business in California as a contractor under your present business name and license number? _____ years

7. Is your firm currently the debtor in a bankruptcy case?

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

8. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above)

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

Licenses

9. List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm:

10. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license.

11. Has your firm changed names or license number in the past five years?

Yes (explain on a separate signed page, including reason for the change) No

12. Has any owner, partner or (for corporations:) officer of your firm operated a construction firm under any other name in the last five years?

Yes (explain on a separate signed page, including reason for the change) No

13. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

Yes (explain on a separate signed page) No

14. Has there been a complaint filed with the CSLB against your company that required a formal hearing or inquiry within the last five years?

Yes (explain on a separate signed page) No

Disputes

15. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

Yes No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

16. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.

Yes No

If "yes," explain on a separate signed page. State whether the firm involved was the firm applying for qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

17. In the last five years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

Yes No

If "yes," explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

18. Has your firm been terminated for cause on any public works project within the last five years?

Yes (explain on a separate signed page) No

* * * * *

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than \$50,000.

19. In the past five years has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

Yes No

If "yes," on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

20. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

Yes No

If "yes," on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

* * * * *

21. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

Yes No

If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

22. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If "yes," explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

Criminal Matters and Related Civil Suits

23. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

24. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

25. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

If "yes," identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

26. Has your firm been found in a final decision of a court to have submitted a false claim to a public agency within the last five years?

Yes No

If "yes," identify on a separate signed page the circumstances surrounding each such claim. Include any decisions/findings/determinations that have been rescinded, settled or are on appeal.

27. Has your firm in the past five years ever failed to honor a claim by a public entity to remedy an alleged warranty item or an alleged defective workmanship item during the contract warranty period?

Yes No

If "yes," identify on a separate signed page the circumstances surrounding each such claim and the resolution or lack thereof.

Bonding

28. Bonding capacity: Provide documentation from your surety identifying the following:

Name of bonding company/surety: _____

Name of surety agent, address and telephone number: _____

29. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.

30. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

31. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

C. Compliance with Occupational Safety and Health Laws and with Other Labor Legislation Safety

32. Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

Yes No

If "yes," attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were

issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

33. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes (attach a separate signed page describing each citation) No

34. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes (attach a separate signed page describing each citation) No

35. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

36. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:

NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.

Current year: _____

Previous year: _____

Year prior to previous year: _____

If your EMR for any of these three years is or was 1.00 or higher you may, if you wish, attach a letter of explanation.

37. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

Prevailing Wage and Apprenticeship Compliance Record

38. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

Yes No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

39. During the last five years, has there been more than one occasion in which your own firm has been penalized or required to pay back wages for failure to comply with the federal Davis-Bacon prevailing wage requirements?

Yes No

If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

40. Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract by MRCA.

41. If your firm operates its own State-approved apprenticeship program:

- (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.
- (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).
- (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

42. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

NOTE: You may omit reference to any incident that occurred prior to January 1, 1998, if the violation was by a subcontractor and your firm, as general contractor on a project, had no knowledge of the subcontractor's violation at the time they occurred.

Yes No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

QUESTIONNAIRE CONTINUES ON NEXT PAGE

PART III. RECENT CONSTRUCTION PROJECTS COMPLETED

43. Contractor shall provide information about its **three** most recently completed public works projects and its two largest completed private projects within the last five years. Names and references must be current and verifiable. Each project submitted must meet the following requirements:

- a) Similar scope and values as described in Section 01 00 00 – Summary
- b) Project cost is \$50,000 or greater at time of completion
- c) Completed within the last five years
- d) Project was managed and constructed under the business name submitting for qualification. Projects completed by employees for former employers are not applicable.

Use separate sheets of paper for each project that contain all of the following information:

Project Name: _____

Location: _____

Owner: _____

Contact (name and current phone number): _____

Design Professional: _____

Contact (name and current phone number): _____

Contractor's Superintendent: _____

Brief Description of Project, Scope of Work Performed:

Site Size in Acres: _____

Original Bid Value (including alternates that were exercised): _____

Final Cost of Construction (including change orders): _____

Original Scheduled Completion Date: _____

Time Extensions Granted (number of days): _____

Actual Date of Completion: _____

What mitigation measures (noise, dust, and fumes) were implemented on this project?

How was project schedule developed, updated and tracked?

END OF SECTION

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

Los Angeles River Center and Gardens
570 West Avenue 26, Suite 100
Los Angeles, CA 90065
323-221-9944 FAX 323-221-9934

AGREEMENT

This agreement ("Agreement") is made and entered into on this _____ day of _____, _____ between the MOUNTAINS RECREATION AND CONSERVATION AUTHORITY ("MRCA") a local public agency exercising joint powers of the Santa Monica Mountains Conservancy, the Conejo Recreation & Park District, and the Rancho Simi Recreation & Park District pursuant to Section 6500 *et seq.* of the Government Code, through its Executive Officer Joseph T. Edmiston, and _____, California Contractor License No. _____, Type _____ ("Contractor"), and referred collectively as the "Parties."

MRCA hereby intends to retain the services of Contractor to perform the work ("Work"), as defined herein, in the Scope of Work, and in any and all other attached documents. The Schedule of all exhibits is attached as Exhibit A.

The intention of this Agreement and the attached documents is to include all labor, materials, equipment, and other items necessary for completion of the Work.

NOW THEREFORE, incorporating the above, the MRCA and Contractor agree as follows:

Continued on the next 12 pages plus Exhibits

NAME OF CONTRACTOR
Address
City, State Zip

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

Signature

Signature

Name
Title

Lillian Ikuta
Contracts Officer

FOR OFFICE USE ONLY

Amount	\$0	AGREEMENT NUMBER MRCA xxxx-xx	TAX ID # xx-xxxxxx	Name Name Project Manager
Amount Previously Authorized	\$0	Org Set xxxxxx		Name Name Division Chief
Total	\$0	Project Name: Name		

SCOPE OF WORK. The Contractor shall complete the Work described in the Scope of Work attached hereto as Exhibit B and incorporated by reference herein. All Work shall be completed by the date specified in the Notice to Proceed attached hereto as Exhibit H and incorporated by reference herein.

TERM OF AGREEMENT. The term of this agreement shall run until _____, unless previously terminated or extended. Prior to the completion date, either party may terminate this Agreement by providing the other party with thirty (30) days' notice in writing.

In the event of termination by the MRCA prior to the completion date, the Contractor agrees to take all reasonable measures to prevent further costs to the MRCA under this Agreement, and the MRCA shall be responsible for any reasonable and noncancellable obligations incurred by the Contractor in the performance of this Agreement until the date of the notice to terminate, but only up to the unpaid balance of funding authorized under this Agreement.

In the event of termination by the Contractor terminates during the term of the Agreement or fails to complete the Work as described in the Scope of Work, Contractor shall be liable for repayment to the MRCA of any amount paid by the MRCA under this Agreement for which Work has not been performed. The MRCA may at its sole discretion consider extenuating circumstances and not require payment for Work partially completed.

If Contractor abandons the Work, fails to carry out the Work in a timely manner, or fails to fulfill any other obligation under this Agreement, MRCA may declare Contractor to be in default and shall have the right to terminate this agreement. Upon declaring Contractor in default, MRCA will provide Contractor with five (5) working day's written notice to cure the default. If Contractor is unwilling or unable to cure default to MRCA's satisfaction within this period of time, termination of this Agreement will be final.

COMPENSATION. Total compensation shall not exceed \$ _____. Contractor shall not incur additional expenses without the written prior approval of MRCA's Contracts Officer. Invoices shall clearly indicate services under this Agreement.

PAYMENT. Fees shall be paid to Contractor upon submission of invoices documenting completion of milestones and receipt of deliverables, no more often than monthly. Invoices for reimbursable expenses must contain details of expenses and be supported by receipts. The Contractor shall not bill for any additional work beyond the amount authorized herein without the written approval of MRCA staff.

CONDITIONS:

1. CONTRACTOR'S GUARANTEE. Contractor hereby unconditionally guarantees that the Work will be done in accordance with the requirements of the Agreement and further guarantees that the work will be done and will remain free of defects in workmanship and materials for a period of one year from the date of the Notice of Completion. Contractor hereby agrees to repair and/or replace and all portions of the work, along with any adjacent work damaged or necessary to remove, without any expense whatsoever to MRCA.
 - a. MRCA shall notify Contractor of any defective work or any work not in accordance with the requirements of this Agreement. Within ten (10) Working days of written notice, Contractor shall commence correction and/or completion of said defective or

- incomplete work and shall complete the work within a reasonable time period. If Contractor fails to comply with this requirement, MRCA may complete, or have work completed, at Contractor's expense.
- b. Nothing contained herein shall be construed as a waiver of any rights the MRCA may have to file suit or otherwise bring an action or claim for negligence or defective work related to the Project under existing law.
2. INDEMNIFICATION AND WAIVER OF SUBROGATION. From and after the date this Agreement is signed by the Parties, Contractor shall, for itself and all successors, assigns, transferees, to the fullest extent permitted by law, indemnify, defend (with legal counsel reasonably acceptable to MRCA), protect, and hold harmless MRCA, its joint powers authority members, (including, without limitation, the State of California, the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District), its employees, officers, directors, contractors, agents, the State of California, and all related persons and entities, from and against any and all claims, actions, causes of action, rights, defenses, demands, allegations, damages, fines, penalties, liabilities, losses, encumbrances, liens, obligations, settlements, judgments, awards, appeals, costs, and expenses (including actual fees and costs of attorneys, expert witnesses and other consultants) of any kind or character in law, equity or otherwise, known or unknown, foreseeable or unforeseeable, past, present, or future, arising from, or in connection with Contractor's approved use of the Property and Contractor's entry onto, use, or condition of the portion of the Property affected by the Releasor's Work, including, without limitation, any personal injury or property damage occurring on the affected portion of the Property, or because of the entry onto, or the use or condition of the land caused Releasor's Work or as a result of the activities of Releasor, his agents, employees or contractors, or because of any hazardous materials or substances (as defined by local, state, or federal statute) on or under the Property resulting from the Releasor's activity, or any obligation, liability, damage, or injury to any other real or personal property owned by a third party that results from Releasor's Work and entry onto the Property; and also including, without limitation, any obligation or liability to any governmental agency, and/or other person or entity, to do any Work regarding the affected portion of the Property or to pay any fine or penalty, or to indemnify, defend, protect, and/or hold harmless such governmental agency, and/or other person or entity, in connection with the Releasor's activity, or condition of the affected portion of the Property, including, without limitation, any attorney's fees, costs and expenses claimed to be the responsibility of Releasee or the Related Entities. This indemnity is effective without reference to the existence or applicability of any insurance coverages which may have been required under the Agreement or any additional insured endorsements which may extend to Indemnitees. Accountants, attorneys, or other professionals employed by Indemnitor to defend Indemnitees shall be shall be selected by Indemnitees.

Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor regardless of any prior, concurrent, or subsequent active or passive negligence by the Indemnitees. In the event there is more than one person or entity named in the Agreement as an Indemnitor, then all obligations, liabilities, covenants and conditions under this instrument shall be joint and several.

3. INDEPENDENT CAPACITY. Contractor, and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the MRCA.
4. PROJECT MANAGER. MRCA shall appoint a Project Manager to whom Contractor shall direct, in a timely manner, all questions and communication regarding the day-to-day progress and/or problems related to the Work.
5. ASSIGNMENT. Without written consent of the MRCA, this Agreement is not assignable by Contractor either in whole or in part.
6. TIME IS OF THE ESSENCE. Contractor acknowledges that time is of the essence in this Agreement.
7. NO ALTERATION. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
8. CONTEMPT OF COURT FINDINGS. Contractor, by signing this Agreement does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court had been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a Federal court which orders the Contractor to comply with an order of the National Labor Relations Board (Public Contract Code 10296).
9. NONDISCRIMINATION COMPLAINT STATEMENT. Contractor agrees to provide the MRCA with an executed Form 19 Nondiscrimination Compliance Statement attached hereto, and incorporated by reference herein, as **Exhibit C**.
10. SUBCONTRACTORS. Contractor agrees that all terms and conditions apply to any sub-Contractors retained.
11. COPIES AND COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original. Facsimile signatures and electronic signatures shall have the same force and effect as original signatures.
12. CONTRACTOR'S DUTY TO SUPERVISE WORK. Contractor shall adequately supervise and direct all Work on the project and be solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Agreement. The Contractor shall provide all labor, materials, supplies, equipment, and supervision necessary to complete the Work. Contractor is solely responsible for site security and protection, including securing property from damage caused by reasonably expected weather conditions. MRCA will not be responsible for providing any labor, materials, supplies, equipment, or supervision required to complete the Work.
13. MRCA'S RIGHT TO ACCESS AND INSPECT WORK. Contractor shall ensure that MRCA has access to the work site at all times during the course of this Agreement. MRCA shall have authority to reject any and all portions of the Work that does not conform to the bid specifications. MRCA shall have authority to require Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work, whether or not such Work has

been fabricated, installed, or completed. Contractor shall be responsible to MRCA for the acts or omissions of the Contractor, subcontractors, or any agents or employees thereof, in the completion of the work.

- a. MRCA shall notify Contractor of any defective work or any work not in accordance with the requirements of this Agreement. Within ten (10) working days of written notice, Contractor shall commence correction and/or completion of said defective or incomplete work and shall complete the work within a reasonable time period. If Contractor fails to comply with this requirement, MRCA may complete, or have Work completed, at Contractor's expense.

14. **INSURANCE.** As a condition precedent to the effectiveness of this Agreement, Contractor shall provide MRCA with proof of all required insurance, outlined below. The Mountains Recreation and Conservation Authority, the Conejo Recreation and Park District, the Rancho Simi Recreation and Park District, the Santa Monica Mountains Conservancy and the State of California, shall each be named as additional insureds (collectively, "Additional Insureds") on all policies. As Additional Insureds, all employees, agents, directors, and officers, of the Additional Insureds are required to be covered by each policy.

- a. General Liability. Contractor shall, at all times during the Term of this Agreement, maintain a policy of comprehensive liability insurance covering all Work to be done pursuant to this Agreement and any applicable amendments. The policy shall cover at least one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) in aggregate for bodily injury and property damage. The policy shall not exclude or except from coverage any of the Work required to be performed under this Agreement.
- b. Automobile. Contractor shall maintain comprehensive automobile insurance throughout the duration of this Agreement of at least one million dollars (\$1,000,000) per occurrence of bodily injury or property damage. The policy shall include all Contractor-owned, non-owned, and hired vehicles employed by the Contractor in the performance of the Work described herein.
- c. Workers Compensation. Contractor shall, at all times during the Term of this Agreement and completion of Work, maintain appropriate Workers compensation insurance as required by California law. By entering into this Agreement, Contractor acknowledges its obligations to all employees under the California Labor Code and represents that it will comply with all requirements therein. As a condition precedent to the effectiveness of this Agreement proof of required coverage will be provided to MRCA by Contractor. In no event will the MRCA or Additional Insureds be responsible for any claims in law or equity due to the failure of the Contractor to comply with the terms of the provisions of this section or this Agreement.
- d. Primary Coverage. Any insurance required of the Contractor herein shall serve as the primary coverage for the MRCA. Any insurance policy maintained by the MRCA shall be in excess of the Contractor's insurance.
- e. Notice. Each policy required herein shall contain a clause providing that written notice shall be given to the MRCA pursuant to Section 24 herein, 30 days prior to any termination, cancellation, suspension, or reduction in coverage or limits.

- f. Separate Coverage. Contractor's insurance shall apply separately to each insured against whom a claim is made, or suit is filed, except with respect to the limits of insurer's liability.

15. **LABOR COMPLIANCE PROGRAM.** Unless otherwise confirmed by written notice of the MRCA, the Work to be completed under this Agreement constitutes a Public Work within the meaning of California Labor Code Sections 1720 and 1720.3. The Contractor, its employees, agents, and subcontractors, shall all be bound by the provisions of the Labor Code and any other applicable federal, state or local law.
 - a. MRCA has adopted a Labor Compliance Program, which states that construction contracts under \$25,000.00 and maintenance contracts under \$15,000.00 will not be subject to prevailing wages, however all other applicable provisions of the Labor Code are incorporated. The Contractor shall strictly adhere to the provisions of the Labor Code regarding minimum wage, the 8-hour day and 40-hour Work week, overtime, weekend and holiday Work, and employment of apprentices. Contractor shall forfeit to the MRCA any penalties prescribed in the Labor Code for violations thereof.
 - b. Pursuant to Section 1776 of the Labor Code, Contractor shall maintain accurate payroll records at all times during the Term of this Agreement and shall ensure that all subcontractors maintain accurate payroll records at all times during the Term of this Agreement. Notwithstanding submissions required by any other Section of this Agreement or any of the Contract Documents, within 24 hours of delivery to Contractor of written request by MRCA, Contractor shall submit certified payroll records for itself and for any subcontractor to MRCA for inspection. Contractor shall disclose to MRCA any past labor violations. MRCA reserves right to make any labor compliance inspection required by law or otherwise deemed necessary.

16. **SMOKING PROHIBITED.** Under no circumstances is the Contractor to have smoke breaks anywhere near MRCA parcels.

17. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such actions shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- c. The Contractor will send to each labor union or representative of Workers with which he has a collective bargaining agreement or other contractor understanding, a notice to be provided advising the said labor union or Workers' representatives of the Contractor's commitments under this section, Current as of 1-9-173 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontractor purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, in the event that the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

18. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.

- a. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

b. Prohibitions.

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in paragraph (c) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 4. Provide, as part of its performance of this Agreement, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. Exceptions.

- i. This clause does not prohibit contractors from providing—
 1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 1. Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.

2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- d. Reporting requirement.
- i. In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of this Agreement, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.
 - ii. The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 1. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 2. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- e. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.
19. DOMESTIC PREFERENCE FOR PROCUREMENTS. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

20. DEBAREMENT AND SUSPENSION

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the contractors, its principals (defined at 2C.F.R.§ 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R.§ 180.940) or disqualified (defined at 2 C.F.R.§ 180.935).
- b. The Contractor must comply with 2 C.F.R.pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R.pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier-covered transactions.

21. BYRD ANTI-LOBBYING AMENDMENT. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C.§ 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

22. ACCESS TO RECORDS. The following access to records requirements apply to this Agreement:

- a. The Contractor agrees to provide Mountains Recreation and Conservation Authority, the State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or their authorized representatives with access to construction or other work sites pertaining to the Work being completed under the Agreement.

23. DHS SEAL, LOG, AND FLAGS. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
24. LICENSES AND PERMITS. Contractor hereby certifies that they and all sub-Contractors are licensed by and in good standing with the California State Contractors License Board and shall maintain such standing at all times during the Term of this Agreement. Contractor is solely responsible for maintaining such licenses, permits, or certificates during the completion of the Work. MRCA shall not be responsible for procuring any licenses, permits, or certificates to complete the Work, but shall reasonably cooperate with Contractor to the extent necessary for Contractor to obtain required license, permits, or certificates.
25. COMPLIANCE WITH STATE AND LOCAL LAWS. Contractor shall comply with all applicable state, and local laws in the course of completing the Work and in administering this Agreement. Violation of applicable laws shall constitute material breach of this Agreement.
26. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
27. NO OBLIGATION BY FEDERAL GOVERNMENT. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Agreement.
28. FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.
29. SUB-CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. If subcontracts are let, Contractor shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - e. Using the services and assistance, as appropriate, of such organizations as the Small

Business Administration and the Minority Business Development Agency of the Department of Commerce.

30. NOTICES. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (a) when delivered by personal delivery, (b) upon receipt or refusal of delivery when delivered by United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid or by FedEx or a similar overnight courier service, or (c) when actually received by e-mail. If any notice is delivered on a non-business day or after 5:00pm on a business day, such notice shall be deemed to have been delivered on the next business day. All notices shall be addressed as follows:

To MRCA: 570 West Avenue 26, Suite 100
Los Angeles, CA 90065
Attn: Joseph T. Edmiston

And: 570 West Avenue 26, Suite 100
Los Angeles, CA 90065
Attn: Jeff Maloney
Telephone 323-221-9944, ext. 101
E-mail: jeff.maloney@mrca.ca.gov

And: MRCA Project Manager/Staff Counsel

To Contractor:

Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this Section but notice of change of address is effective only upon receipt.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

MOUNTAINS RECREATION AND
CONSERVATION AUTHORITY:

CONTRACTOR
NAME:

Signature

Lillian Ikuta
Contracts Officer

Signature

Name
Title

Exhibit A – List of Exhibits

Exhibit A – List of Exhibits

Exhibit B – Scope of Work

Exhibit C – Contractor's Statement of Nondiscrimination

Exhibit D – Proposed Change Order Form

Exhibit E – MRCA Property

Exhibit F – Cost Breakdown

Exhibit G – General Conditions – Refer to Bid Package dated _/_/_

Exhibit H – Notice to Proceed

Exhibit I – MRCA Board authorization

**EXHIBIT B
SCOPE OF WORK**

Exhibit C
Form 19 Nondiscrimination Compliance Statement

1. During the performance of this Agreement, the recipient, Contractor shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et. seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et. seq.), the provisions of Article 9.5, Chapter 1, Part , Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State agency to implement such article.
3. Recipient, Contractor, shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
4. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under this Agreement.

STATEMENT OF COMPLIANCE

_____ (Company Name), hereinafter referred to as "prospective Contractor", hereby certifies, unless specifically exempted, compliance with Government Code Section 12990 and California Administrative Code Title II, Division 4 Chapter 5 in matters relating to the development, implementation and maintenance of a nondiscrimination program. Prospective Contractor agrees not to unlawfully discriminate against any employee or applicants for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age (over forty).

I _____ (Name of Official) hereby swear that I am duly authorized to legally bind the prospective Contractor to the above-described certification. I am fully aware that this certification executed on _____ (Date) in the county of _____ (County) is made under the penalty of perjury under the laws of the State of California.

Signature _____

Title _____

EXHIBIT E
MRCA PROPERTY

EXHIBIT G – GENERAL CONDITIONS

01 01 02 GENERAL CONDITIONS

TABLE OF CONTENTS

ARTICLE 1 – GENERAL PROVISIONS	3
1.1 BASIC DEFINITIONS.....	3
1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS	3
ARTICLE 2 – MRCA	5
2.1 INFORMATION AND SERVICES PROVIDED BY MRCA.....	5
2.2 MRCA'S RIGHT TO STOP THE WORK.....	5
2.3 MRCA'S RIGHT TO CARRY OUT THE WORK	5
ARTICLE 3 – CONTRACTOR.....	6
3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR	6
3.2 SUPERVISION AND CONSTRUCTION PROCEDURES	6
3.3 LABOR AND MATERIALS	7
3.4 CONTRACTOR'S WARRANTY	7
3.5 TAXES.....	8
3.6 PERMITS, FEES, AND NOTICES	8
3.7 APPLICABLE CODE REQUIREMENTS.....	8
3.8 SCHEDULES REQUIRED OF CONTRACTOR	8
3.9 AS-BUILT DOCUMENTS.....	9
3.10 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES	9
3.11 USE OF SITE AND CLEAN UP	11
3.12 CUTTING, FITTING, AND PATCHING.....	11
3.13 ACCESS TO WORK	11
3.14 ROYALTIES AND PATENTS.....	12
3.15 DIFFERING SITE CONDITIONS	12
3.16 INFORMATION AVAILABLE TO BIDDERS	12
3.17 LIABILITY FOR AND REPAIR OF DAMAGED WORK	13
3.18 INDEMNIFICATION BY CONTRACTOR.....	13
3.19 PROJECT CLOSEOUT DOCUMENTS	13
3.20 SUBSTITUTIONS	13
ARTICLE 4 – ADMINISTRATION OF THE CONTRACT AND PROJECT	14
4.1 ADMINISTRATION OF THE CONTRACT	14
4.2 CONTRACTOR CHANGE ORDER REQUESTS	14
4.3 MRCA-INITIATED PROPOSAL REQUESTS	15
4.4 REQUESTS FOR INFORMATION (RFI)	15
4.5 PROJECT MEETINGS.....	16
ARTICLE 5 – SUBCONTRACTORS.....	18
5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK	18
5.2 SUBCONTRACTUAL RELATIONS	18
ARTICLE 6 – CONSTRUCTION BY MRCA OR BY SEPARATE CONTRACTORS	19
6.1 MRCA'S RIGHT TO PERFORM CONSTRUCTION AND AWARD SEPARATE CONTRACTS ...	19
6.2 MUTUAL RESPONSIBILITY.....	19
6.3 MRCA'S RIGHT TO CLEAN UP	19
ARTICLE 7 – CHANGES IN THE WORK.....	20
7.1 CHANGES	20
7.2 CHANGE ORDER PROCEDURES	20
7.3 FIELD ORDERS.....	23

ARTICLE 8 – CONTRACT TIME	23
8.1 COMMENCEMENT OF THE WORK.....	23
8.2 DELAY.....	23
8.3 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY	23
8.4 COMPENSATION FOR DELAY	25
ARTICLE 9 – PAYMENTS AND COMPLETION.....	26
9.1 COST BREAKDOWN.....	26
9.2 PROGRESS PAYMENT	26
9.3 APPLICATION FOR PAYMENT	28
9.4 BENEFICIAL OCCUPANCY	29
9.5 SUBSTANTIAL COMPLETION.....	29
9.6 FINAL COMPLETION AND FINAL PAYMENT.....	29
ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY	31
10.1 SAFETY PRECAUTIONS AND PROGRAMS	31
10.1.2 Contractor shall submit for MRCA approval a detailed plan for worker protection during the excavation of trenches five feet or more in depth. Such plan shall be submitted in advance of excavation and shall indicate the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. 10.2 EMERGENCIES	31
10.3 HAZARDOUS MATERIALS	31
ARTICLE 11 – INSURANCE AND BONDS	32
11.1 CONTRACTOR'S INSURANCE	32
11.2 PERFORMANCE BOND AND PAYMENT BOND	32
ARTICLE 12 – QUALITY REQUIREMENTS	32
12.1 EXECUTION	32
12.2 TESTS AND INSPECTION.....	34
12.3 UNCOVERING OF WORK.....	34
12.4 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD.....	35
ARTICLE 13 – CONSTRUCTION SUSTAINABILITY REQUIREMENTS	35
13.1 GENERAL SUSTAINABILITY REQUIREMENTS.....	35
13.2 WASTE MANAGEMENT.....	36
13.3 STORMWATER POLLUTION PREVENTION PLAN.....	36
ARTICLE 14 – TEMPORARY FACILITIES AND CONTROLS.....	38
ARTICLE 15 – OPERATION AND MAINTENANCE DATA.....	38

ARTICLE 1 – GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

“Agreement” means the written Contract between Contractor and MRCA set forth in the Contract Documents.

“Contract Documents” means the Conditions of the Contract, Exhibits to the Contract, General Conditions, Special Conditions, if any, the Drawings, the Specifications, all Addenda issued prior to award, and all Modifications thereto. The approved Cost Breakdown and approved Schedule of Work are Exhibits to the Contract.

“Contract Sum” means the total amount of Compensation stated in the Agreement for the performance of the Work, as adjusted by Change Order.

“Contract Time” means the number of days set forth in the Agreement, as adjusted by Change Order, within which Contractor must achieve Final Completion.

“Cost Breakdown” means the detailed description of the Contract Sum, with the cost of each Work Activity and all associated costs itemized as separate line items.

“Day” shall mean calendar day, unless otherwise specifically provided.

“MRCA” means the Mountains Recreation and Conservation Authority, a local public agency exercising joint powers of Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District pursuant to Section 6500, et seq. of the Government Code.

“Project” means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include construction by MRCA or by Separate Contractors.

“Schedule of Work” means the detailed description of a practical plan to perform and complete the Work within the Contract Time, indicating critical path items and milestones.

“Subcontractor” means a person or firm that has a contract with Contractor or with a Subcontractor to perform a portion of the Work, including suppliers. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

“Work” means all construction, services and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.1 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

1.2.1 The Contract Documents and all copies thereof furnished to or provided by Contractor are the property of MRCA and are not to be used on other work.

- 1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. All Work mentioned or indicated in the Contract Documents, and all Work reasonably inferable from them, shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.
- 1.2.3 In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on the Contractor shall prevail. In the event of conflicts or discrepancies among the Contract Documents interpretations will be based on the order of precedence as follows:
- .1 Permits from the public regulatory agencies and departments as may be required for the Work by Applicable Law, including directives from regulatory agency inspectors.
 - .2 Change Orders and Unilateral Change Orders
 - .3 The Agreement, including all exhibits
 - .4 Addenda
 - .5 Bid/Proposal
 - .6 Special Conditions
 - .7 Technical Specifications
 - .8 General Conditions
 - .9 Plans
 - .10 Standard Plans that are specifically referenced, and *Standard Specifications for Public Works Construction* (“Greenbook”) excluding Part 1, latest edition at time of bid.
 - .11 Manufacturer’s Specifications
- 1.2.5 Each and every provision and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause is included herein. If through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon application of either Party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 1.2.6 The Conditions of the Project shall include the specific conditions set forth in this document including the “Standard Specifications for Public Works Construction,” most current edition and supplement as of the award of Contract. This publication is commonly known as the “Greenbook” and is promulgated by the Joint Cooperative Committee of the Southern California Chapter of the American Associated General Contractors of California. In the case of inconsistencies between the provisions of the Contract Documents and the provisions of the

Greenbook, the provisions of the Contract Documents shall control. This provision does not apply to Work not included in the Greenbook.

- 1.2.7 Quantities listed in the Contract Documents, including but not limited to civil earthwork import/export amounts and material counts, is provided for general permitting and plan check purposes only. Contractor shall verify all quantities before beginning the work based on the existing site conditions, existing topographic survey, if available, and the planned improvements. Contractor is responsible for all quantities required to perform the work in accordance with the Contract Documents.

ARTICLE 2 – MRCA

2.1 INFORMATION AND SERVICES PROVIDED BY MRCA

- 2.1.1 If required for performance of the Work, as determined by MRCA, MRCA will make available a survey describing known physical characteristics, boundaries, easements, and utility locations for the Project site, if such a survey exists.
- 2.1.2 Contractor will be furnished up to five copies of the Contract Documents as MRCA deems reasonably necessary for execution of the Work.
- 2.1.3 MRCA will provide, no later than the date designated in the Schedule of Work accepted by MRCA, access to the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents for use by Contractor.

2.2 MRCA'S RIGHT TO STOP THE WORK

- 2.2.1 If Contractor fails to correct Defective Work as required by Article 12.4 or fails to perform the Work in accordance with the Contract Documents, MRCA may direct Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order.

2.3 MRCA'S RIGHT TO CARRY OUT THE WORK

- 2.3.1 If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Schedule of Work, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from MRCA, fails within 7 (seven) days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the MRCA may specify, to correct such failure, MRCA may, without prejudice to other remedies MRCA may have, correct such failure at Contractor's expense. In such case, MRCA will be entitled to deduct from payments then or thereafter due Contractor the cost of correcting such failure, including without limitation compensation for the additional services and expenses of MRCA 's consultants made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to MRCA.

ARTICLE 3 – CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.1.1 Contractor shall carefully study and compare each of the Contract Documents with the others and with information furnished by MRCA, and shall promptly report in writing to MRCA any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Contractor.
- 3.1.2 Contractor shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Contractor before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to MRCA's Representative.
- 3.1.3 If Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2, without notifying and obtaining the written consent of MRCA's Representative, Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
- 3.1.4 Contractor shall contact DigAlert prior to starting any grading and/or excavation activities.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.2.1 Contractor shall supervise, coordinate, and direct the Work using Contractor's best skills and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work under the Contract.
- 3.2.2 Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. Contractor shall provide competent, fully qualified personnel to perform the Work. Contractor shall be responsible to MRCA for acts and omissions of Contractor's employees, Subcontractors, Material Suppliers, and their agents and employees, and any other persons or entities performing any of the Work under a direct or indirect contract with Contractor.
- 3.2.3 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Prior to beginning the Work, Contractor shall submit to MRCA the name of the superintendent and the names, if any, of other employees that are authorized to represent Contractor.
- 3.2.4 The Superintendent or other authorized Contractor's Project Representative shall attend all job meetings, be actively involved throughout all phases of the Work and maintain oversight of the Project at all times.

3.3 LABOR AND MATERIALS

- 3.3.1 Unless otherwise provided in the Contract, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Final Completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 3.3.2 Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. Contractor shall be responsible for space requirements, locations and staging of its equipment in areas and location acceptable to MRCA representative.
- 3.3.3 Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. When required in writing by MRCA, Contractor or any Subcontractor shall immediately remove from the Project site any person who is, in the reasonable determination of MRCA, incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails to properly perform the Work, and shall not again employ such discharged person on the Work. Such discharge shall not be the basis of any claim for compensation or damages against MRCA or any of its officers or agents.
- 3.3.4 Contractor shall employ highly skilled and trained craftpersons together with such other employees as required by applicable, laws, rules and ordinances. Each craft shall be under constant supervision by qualified superintendent or other designated supervisor to ensure that Work performed is of highest quality. Current specialty certifications, approvals and licenses of building product manufacturers shall be held by those performing the Work, as applicable.

3.4 CONTRACTOR'S WARRANTY

- 3.4.1 Contractor warrants to MRCA that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Work and all products will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly accepted by MRCA, shall be deemed defective. If required by MRCA, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No substitute "or equal" material or equipment shall be installed without written approval of MRCA.
- 3.4.2 Contractor shall obtain in the name of MRCA, or transfer or assign to MRCA or MRCA's designee prior to the time of Final Completion of the Work, any and all warranties or guarantees which Contractor is required to obtain pursuant to the Contract Documents and which Contractor obtained from any other person or entity other than Contractor including, but not limited to, Subcontractors and manufacturers, and further agrees to perform Work in such a manner so as to preserve any and all such warranties. Contractor shall secure warranties from all Subcontractors in the form approved by MRCA.

3.5 TAXES

- 3.5.1 Contractor shall pay all sales, consumer, use, and similar taxes for the Work or portions thereof provided by Contractor and such taxes shall be included in the Contract Sum.

3.6 PERMITS, FEES, AND NOTICES

- 3.6.1 Except for the permits and approvals with respect to which MRCA is not subject, Contractor shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Contractor shall deliver to MRCA all original licenses, permits, and approvals obtained by Contractor in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.
- 3.6.2 Contractor shall comply with and give notices required by Applicable Law and lawful orders of public authorities with jurisdiction over the Work.

3.7 APPLICABLE CODE REQUIREMENTS

- 3.7.1 Contractor shall perform the Work in accordance with all applicable code requirements. Contractor is responsible to be fully informed as to the applicable code requirements affecting the Work and to ascertain that the Contractor's Submittals, and the Work, are in accordance with applicable code requirements. If the Contractor observes that any portions of the Contract Documents are at variance with applicable code requirements, Contractor shall promptly notify MRCA representative in writing by RFI.
- 3.7.2 If the Contractor performs any Work when the Contractor knows or should have reasonably known it would be contrary to applicable code requirements, Contractor shall assume full responsibility therefore and shall bear all risks and costs directly and indirectly attributable to the correction of the Work.
- 3.7.3 If the Contractor is prevented, in any manner, from strict compliance with the Contract Documents due to applicable code requirements, directly or indirectly, the Contractor shall immediately notify MRCA representative.

3.8 SCHEDULES REQUIRED OF CONTRACTOR

- 3.8.1 Contractor shall provide MRCA with a Schedule of Work that will provide in sufficient detail the chronological relationship of all activities of the Work, including but not limited to start and completion dates of various activities. Said schedule should also include time for submittal and review of shop drawings to MRCA for approval, procurement of materials, scheduling of equipment, and the removal, protection, or relocation of utilities if said activities are pertinent to Contractor's obligations under the Contract.

The Schedule of Work shall not exceed time limits set forth in the Contract Documents and shall comply with all of the scheduling requirements as set forth in the Specifications. Failure to submit a schedule or submittal of a schedule which shows completion of the Work beyond the specified completion date shall be deemed a material breach by the Contractor. The schedule must indicate the beginning and completion of all phases of construction and shall use the "critical

path method” (commonly called CPM) for the value reporting, planning and scheduling, of all Work required under the Contract Documents.

- 3.8.2 The Schedule of Work must demonstrate the project will be completed within the Contract Time and shall include Inclement Weather Days based on NOAA average. The Weather Days shall be shown on the schedule and if not used will become float.
- 3.8.3 The Schedule of Work shall contain both a Substantial Completion Date and a Completion Date, which shall be no more than 30 days after Substantial Completion. Punchlist activities shall be included in the baseline schedule.
- 3.8.3 The Schedule of Work shall include critical dates for MRCA actions so as not to delay the Project, for example approval of mockups, etc.
- 3.8.4 Contractor shall provide MRCA with a Submittal Schedule for each submittal required by the Contract Documents, including but not limited to Shop Drawings, Product Data, Samples, Mockups, Operations and Maintenance Manuals, and Closeout items, coordinated with other activities in the Schedule of Work.
- 3.8.5 All Schedules are due to MRCA for review within 10 days after receipt of the Notice of Intent to Award Bid as the apparent lowest responsible Bidder.
- 3.8.6 Prior to commencement of Work, Contractor shall prepare and submit to Owner a detailed Site Logistics Plan, in same size and scale of Drawings, setting forth Contractor’s plan of Work relative, but not limited, to hauling routes, construction parking, material layout areas and storage, staging, deliveries, site fencing and gates, sanitary facilities and Storm Water Pollution Prevention Plan (SWPPP).

3.9 AS-BUILT DOCUMENTS

- 3.9.1 Contractor shall maintain one set of As-built drawings and specifications, which shall be kept up to date during the Work of the Contract. Contractor shall maintain one copy of the As-built drawings at the site for MRCA’s review at all times in good condition. All changes which are incorporated into the Work which differ from the documents as drawn and written shall be noted on the As-built set. Notations shall reflect the actual materials, equipment and installation methods used for the Work and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion each drawing and the specification cover shall be signed by Contractor and dated attesting to the completeness of the information noted therein.
- 3.9.2 As-built Documents shall be turned over to the MRCA, in both hard copy and PDF format, and shall become part of the Record Documents. As-built drawings shall be submitted to MRCA on a monthly basis for review and approval. Per Article 9.3.4, an Application for Payment may not be approved if Contractor’s obligation to maintain As-built drawings is not met.

3.10 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- 3.10.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how Contractor proposes to

conform to the information given and the design concept expressed in the Contract Documents.

- 3.10.2 Contractor shall review, approve, and submit to MRCA Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness, in such sequence as to cause no delay in the Work or in the activities of MRCA or of Separate Contractors, and in accordance with the Submittal Schedule.
- 3.10.3 Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by MRCA and no exceptions have been taken by MRCA.
- 3.10.4 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Contractor represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.
- 3.10.5 If Contractor discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Contractor shall notify MRCA immediately and receive instruction before proceeding with the affected Work.
- 3.10.6 Samples of materials shall be provided in the full range of color, texture, and pattern for selection by MRCA. Submittal for any items requiring color selection must be received before item will be approved.
- 3.10.7 Before installing portions of the Work requiring mockups, build mockups for each form of construction and finish required to comply with the following requirements, using materials indicated for the completed Work:
 - .1 Build mockups in location and of size indicated or, if not indicated, as directed by MRCA. Notify MRCA in advance when mockups will be constructed. Obtain MRCA's approval of mockups before starting work, fabrication, or construction.
 - .2 Mockups shall demonstrate the proposed range of aesthetic effects and workmanship.
 - .3 Obtain MRCA approval of mockups before starting work, fabrication or construction.
 - .4 Maintain mockups during construction in an undisturbed condition as a standard for judging the completed Work.
 - .5 Demolish and remove mockups when directed unless otherwise indicated.
- 3.10.8 Submittals must identify variations from Contract Documents and product or system limitations which may be detrimental to successful performance of the completed work.

3.11 USE OF SITE AND CLEAN UP

- 3.11.1 Contractor shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Contractor. Contractor shall remove all excess dirt, waste material, and rubbish caused by the Contractor; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.
- 3.11.2 Personnel of Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.12 CUTTING, FITTING, AND PATCHING

- 3.12.1 Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.
- 3.12.2 Contractor shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Contractor shall not cut or alter the work of any Separate Contractor without the prior consent of MRCA's Representative.
- 3.12.3 Employ skilled workers to perform cutting and patching, using methods least likely to damage elements retained or adjoining construction. Proceed with cutting and patching at the earliest feasible time, and complete without delay.
- 3.12.4 Remove, replace, patch, and repair materials and surfaces cut or damaged during installation or cutting and patching operations, by methods and with materials so as not to void existing warranties.
- 3.12.5 Protect in-place construction during cutting and patching to prevent damage.
- 3.12.6 Patch construction by filling, repairing, refinishing, closing up, and similar operations following performance of other work. Patch with durable seams that are as invisible as practicable. Provide materials and comply with installation requirements specified in other Sections, where applicable. Restore exposed finishes of patched areas and extend finish restoration into retained adjoining construction in a manner that will minimize evidence of patching and refinishing.
- 3.12.7 Clean areas and spaces where cutting and patching are performed. Remove paint, mortar, oils, putty, and similar materials from adjacent finished surfaces.

3.13 ACCESS TO WORK

- 3.13.1 MRCA, their consultants, and other persons authorized by MRCA will at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access and for inspection.

3.14 ROYALTIES AND PATENTS

3.14.1 Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor shall defend suits or claims resulting from Contractor's or any Subcontractor's infringement of patent rights and shall Indemnify, defend and hold harmless MRCA and MRCA from losses on account thereof.

3.15 DIFFERING SITE CONDITIONS

3.15.1 If Contractor encounters any of the following conditions at the site, Contractor shall immediately notify the MRCA in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

- .1 Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents, or that were disclosed to Contractor by MRCA; or
- .2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.15.2 If it is determined by MRCA that the concealed conditions could not have reasonably been anticipated and were not otherwise disclosed to the Contractor, Contractor shall be entitled to an adjustment to the Contract Sum and/or Contract Time as the result of extra costs and/or delays resulting from a materially differing site condition, if and only if Contractor fulfills the following conditions:

- .1 Contractor fully complies with Article 3.15.1; and
- .2 Contractor fully complies with Article 4 (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.15.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in Articles 7 and 8.

3.16 INFORMATION AVAILABLE TO BIDDERS

3.16.1 Any information provided is subject to the following provisions:

- .1 The information is made available for the convenience of Bidders and is not a part of the Contract.
- .2 The Contractor may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.
- .3 Other components of the information, including but not limited to recommendations, may not be relied upon by Contractor. MRCA shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Contractor.
- .4 This section pertains only to items listed as "Information" in the Specifications, including but not limited to geotechnical reports and environmental studies.

3.17 LIABILITY FOR AND REPAIR OF DAMAGED WORK

- 3.17.1 Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to MRCA's acceptance of the Project as fully completed except that Contractor shall not be liable for Acts of God (as used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale within close proximity of the project site and tidal waves) or flood, provided that the loss was not caused in whole or in part by the negligent acts or omissions of Contractor, its officers, agents or employees (including all Subcontractors and suppliers). As used herein, "flood" shall have the same meaning as in builder's risk property insurance. Damages caused by an Act of God must be promptly reported to MRCA and documented.
- 3.17.2 At MRCA's discretion, MRCA may carry Builder's Risk property insurance or request a Cost Proposal from Contractor to do so. Regardless of the policy holder, Contractor shall be responsible to pay all deductibles and produce all documentation for claims. Contractor's Builder's Risk insurance shall be the primary coverage in the event MRCA carries a policy.
- 3.17.3 Contractor is responsible for protecting the Project from inclement weather conditions.

3.18 INDEMNIFICATION BY CONTRACTOR

- 3.18.1 Contractor is required to indemnify, defend and hold harmless MRCA and other parties to the extent stated in the Agreement.

3.19 PROJECT CLOSEOUT DOCUMENTS

- 3.19.1 Contractor is required to turn over three complete hard-copy sets of all closeout documents, organized and clearly labeled in 3-ring binders or bankers boxes. Contractor is required to submit one digital copy of all closeout documents on a portable media drive (flash drive, external hard drive, CD, etc.) with files organized and labeled.

3.20 SUBSTITUTIONS

- 3.20.1 Requests for substitutions shall be made no more than thirty-five (35) days after the award of Contract.
- 3.20.2 If a substitute is proposed, Contractor shall provide a statement indicating why specified product or fabrication or installation cannot be provided, coordination information, including a list of changes or modifications needed to other parts of the Work that will be necessary to accommodate proposed substitution, cost information, including a proposal of change, if any, in the Contract Sum and/or Contract Time. Contractor shall submit product data, including drawings and descriptions of products and fabrication and installation procedures. Contractor shall submit evidence that the substitute is equal to or better than the specified item.
- 3.20.3 If a substitute is proposed, Contractor shall also provide the following upon request:

- .1 samples;
- .2 certificates and qualification data;
- .3 list of similar installations for completed projects with project names and addresses;
- .4 comparison of Contractor's construction schedule using proposed substitution;
- .5 Contractor's waiver of rights to additional payment or time that may subsequently become necessary because of
 - i. failure of proposed substitution to produce indicated results, or
 - ii. inability to procure the originally specified materials in time to meet the prescribed schedule after the proposed substitution is rejected.

3.20.4 MRCA is not obligated to accept proposed substitutions.

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT AND PROJECT

4.1 ADMINISTRATION OF THE CONTRACT

4.1.1 The MRCA will provide general administration of the Agreement including performance of the functions hereinafter described.

4.2 CONTRACTOR CHANGE ORDER REQUESTS

4.2.1 Contractor may request changes to the Contract Sum and/or Contract Time for Extra Work, materially differing site conditions, or Delays to Final Completion of the Work.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time, payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

- .1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2; and
- .2 If requested, timely submission of additional informational requested by MRCA pursuant to Article 4.2.3.3.

4.2.3 Change Order Request:

- .1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Contractor discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by MRCA for submission of the Change Order Request.
- .2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, state the effect of the change on the Work, specify the amount of any requested adjustment of the Contract Sum (including itemized list of costs), include an updated

Schedule of Work, and specify any requested adjustment of the Contract Time. Use available total float before requesting an extension of the Contract Time.

- .3 Upon request of MRCA's Representative, Contractor shall submit such additional information as may be requested by MRCA for the purpose of evaluating the Change Order Request.

4.2.4 MRCA will make a decision on a Change Order Request within a reasonable time.

4.3 MRCA-INITIATED PROPOSAL REQUESTS

4.3.1 MRCA may order changes to the Work that may require adjustment to the Contract Sum or Contract Time. Such requests are not instructions either to stop work in progress or to execute the proposed change.

4.3.2 Within time specified in Proposal Request, Contractor shall submit a Cost Proposal estimating cost adjustments to the Contract Sum and the Contract Time necessary to execute the change. The quotation must specify the amount of any requested adjustment of the Contract Sum (including itemized list of costs), include an updated Schedule of Work, and specify any requested adjustment of the Contract Time. Use available total float before requesting an extension of the Contract Time.

4.4 REQUESTS FOR INFORMATION (RFI)

4.4.1 Immediately on discovery of the need for additional information or interpretation of the Contract Documents, Contractor shall prepare and submit an RFI in the form specified. Include a detailed, legible description of item needing information or interpretation and the following:

- .1 Project name/location.
- .2 Date.
- .3 Name of Contractor.
- .4 RFI number, numbered sequentially.
- .5 RFI subject.
- .6 Drawing number and detail references, and Specification Section number and title and related paragraphs, as appropriate.
- .7 Field dimensions and conditions, as appropriate.
- .8 Contractor's suggested resolution. If Contractor's solution(s) impacts the Contract Time or the Contract Sum, Contractor shall state impact in the RFI.
- .9 Contractor's signature.
- .10 Attachments: Include sketches, descriptions, measurements, photos, Product Data, Shop Drawings, coordination drawings, and other information necessary to fully describe items needing interpretation.

- 4.4.2 MRCA will review each RFI, determine action required, and respond. Allow seven (7) working days for response for each RFI. RFIs received after 1:00 p.m. will be considered as received the following working day. Incomplete RFIs or inaccurately prepared RFIs will be returned without action.
- 4.4.3 Prepare, maintain, and submit a tabular log of RFIs organized by the RFI number. On receipt of MRCA's action, update the RFI log and immediately distribute the RFI response to affected parties. Review response and notify MRCA within seven (7) days if Contractor disagrees with response.

4.5 PROJECT MEETINGS

- 4.5.1 Meetings shall be conducted at Project site unless otherwise indicated. Contractor shall inform participants, MRCA, and individuals whose presence is required of date and time of each meeting. MRCA may invite other parties to attend any meeting at its discretion.
- 4.5.2 Entity responsible for conducting meeting shall prepare and distribute meeting agenda, and prepare and distribute minutes recording significant discussions and agreements achieved within three (3) days of the meeting. Participants shall review draft minutes and notify the preparer of any disputed items prior to the next meeting.
- 4.5.3 MRCA will schedule and conduct a preconstruction conference before starting construction no later than fifteen (15) days after execution of the Agreement. Attendees shall include the following: Authorized representatives of MRCA and their consultants; Contractor and its superintendent; major subcontractors; suppliers; and other concerned parties. Participants at the conference shall be familiar with Project and authorized to conclude matters relating to the Work.
- 4.5.4 The preconstruction conference is held to discuss items of significance that could affect progress, including the following:
- .1 Tentative construction schedule.
 - .2 Schedule of Values.
 - .3 Phasing.
 - .4 Critical work sequencing and long-lead items.
 - .5 Designation of key personnel and their duties.
 - .6 Procedures for processing field decisions and Change Orders.
 - .7 Procedures for RFIs.
 - .8 Procedures for testing and inspecting.
 - .9 Procedures for processing Applications for Payment.
 - .10 Distribution of the Contract Documents.
 - .11 Submittal procedures.
 - .12 Preparation of record documents.

- .13 Use of the premises.
- .14 Work restrictions.
- .15 Working hours.
- .16 Owner's occupancy requirements.
- .17 Responsibility for temporary facilities and controls.
- .18 Procedures for moisture and mold control.
- .19 Procedures for disruptions and shutdowns.
- .20 Construction waste management and recycling.
- .21 Parking availability.
- .22 Office, work, and storage areas.
- .23 Equipment deliveries and priorities.
- .24 First aid, Health and Safety Plan.
- .25 Security.
- .26 Progress cleaning.
- .27 Waste Management Plan.

4.5.5 Contractor shall conduct progress meetings at weekly intervals, or other interval approved by MRCA. In addition to representatives of MRCA, attendees shall include the superintendent, each contractor, subcontractor, supplier, and other entity concerned with current progress or involved in planning, coordination, or performance of future activities. All participants at the meeting shall be familiar with Project and authorized to conclude matters relating to the Work. Weekly reports required by the Agreement may be submitted to MRCA at the weekly progress meetings. At MRCA's sole discretion weekly meetings may be conducted by the MRCA's Representative.

4.5.6 The progress meetings are held to review and discuss project progress and other topics for discussion as appropriate to status of Project, including the following:

- .1 Interface requirements.
- .2 Sequence of operations.
- .3 Status of submittals.
- .4 Deliveries.
- .5 Off-site fabrication.
- .6 Access.
- .7 Site utilization.
- .8 Temporary facilities and controls.
- .9 Progress cleaning.

- .10 Quality and work standards.
- .11 Status of correction of deficient items.
- .12 Field observations.
- .13 Status of RFIs.
- .14 Status of proposal requests.
- .15 Pending changes.
- .16 Status of Change Orders.
- .17 Pending claims and disputes.
- .18 Documentation of information for payment requests.
- .19 Proposed revisions to SWPPP, Waste Management Plan, and all other approved documents.

ARTICLE 5 – SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.1.1 Unless otherwise stated in the Contract Documents, Contractor shall submit in writing, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Work that were not previously listed in Contractor's Bid.
- 5.1.2 Any Subcontractor may be disqualified if MRCA determines that such Subcontractor fails to meet the requirements of the Contract Documents or for any other reason.
- 5.1.3 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, as required by MRCA pursuant to Article 5.1.1 shall be borne solely by Contractor and Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

- 5.2.1 Any part of the Work performed for Contractor by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall be in conformance with the requirements stated in the Contract.
- 5.2.2 Upon its execution, Contractor shall promptly furnish to MRCA a true, complete, and executed copy of any subcontract.
- 5.2.3 The Contractor shall not make any substitution for any Subcontractor or person or organization who has been accepted by the MRCA, unless the substitution is accepted in writing by the MRCA.
- 5.2.4 The MRCA shall not have any obligations to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

5.2.5 MRCA retains the right to issue joint checks for payment at its discretion.

ARTICLE 6 – CONSTRUCTION BY MRCA OR BY SEPARATE CONTRACTORS

6.1 MRCA'S RIGHT TO PERFORM CONSTRUCTION AND AWARD SEPARATE CONTRACTS

- 6.1.1 MRCA reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of the Work which have been deleted by Change Order. Contractor shall cooperate with MRCA's forces and Separate Contractors.
- 6.1.2 MRCA will provide coordination of the activities of MRCA's forces and of each Separate Contractor with the Work of Contractor. Contractor shall participate with MRCA and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor shall make necessary revisions to the Contract Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 Contractor shall afford MRCA and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall connect, schedule, and coordinate its construction and operations with the construction and operations of MRCA and Separate Contractors as required by the Contract Documents.
- 6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by MRCA or Separate Contractors, Contractor shall inspect such other construction or operations before proceeding with that portion of the Work. Contractor shall promptly report to MRCA in writing apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Work. Unless otherwise directed by MRCA's Representative, Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by MRCA or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.3 MRCA'S RIGHT TO CLEAN UP

- 6.3.1 If a dispute arises between Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish, MRCA may clean up and allocate the cost between those firms it deems to be responsible.

ARTICLE 7 – CHANGES IN THE WORK

7.1 CHANGES

7.1.1 MRCA may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Field Order without invalidating the terms of the Agreement and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to MRCA.

7.2 CHANGE ORDER PROCEDURES

7.2.1 A Change Order is a Contract Document which has been signed by both MRCA and Contractor, and states their agreement, as applicable, to the following: A change in the Work, if any; The amount of an adjustment of the Contract Sum, if any; The amount of an adjustment of the Contract Time, if any; and/or A modification to any other Agreement term or condition.

7.2.2 Contractor shall provide a Proposed Change Order and Cost Proposal pursuant to Article 4.2 and this Article 7.2 of the General Conditions. Adjustments of the Contract Sum resulting from Extra Work and Deductive Work shall be determined per the methods stated in the Agreement. Adjustments of the Contract Time shall be subject to the provisions in Article 8. Contractor's obligation to provide Cost Proposals shall be subject to the following:

- .1 The obligation of Contractor to provide Cost Proposals is not Extra Work, and shall not entitle the Contractor to an adjustment of the Contract Sum or Contract Time.
- .2 The failure of Contractor to timely provide a Cost Proposal pursuant to Article 4.2 and this Article 7.2 is a material breach of the Contract. Contractor shall be responsible for any delay in implementing a change for which Contractor failed to timely provide a Cost Proposal consistent with the requirements of Article 4.2 and this Article 7.2.
- .3 MRCA shall review the Proposed Change Order and Cost Proposal and issue a formal Change Order if found to be satisfactory and in compliance with the Agreement and these General Conditions.

7.2.3 The term "Cost of Extra Work" as used in this Article 7.2 shall mean actual costs incurred or to be incurred by Contractor and each Subcontractor, and shall be limited to the following (to the extent the Contractor demonstrates that the costs are both reasonable and actually incurred, if such costs have been incurred):

- .1 Straight-time wages or salaries for employees incurred as a result of the performance of the Extra Work.
- .2 Fringe Benefits and Payroll Taxes for employees incurred as a result of the performance of the Extra Work.
- .3 Overtime wages or salaries, specifically authorized in writing by MRCA, for employees incurred as a result of the performance of the Extra Work.

- .4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by MRCA, for employees incurred as a result of the performance of the Extra Work.
- .5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by MRCA. Such costs shall be charged at the lowest price available to the Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to MRCA and Contractor shall make provisions so that they may be obtained.
- .6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work.
- .7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by MRCA, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall be charged at the lowest price available to the Contractor, but in no event shall such costs exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Contractor shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.
- .8 Additional costs of royalties and permits due to the performance of the Extra Work.
- .9 Overhead and Profit shall not exceed 5% of items .1 through .8 above.
- .10 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .9 above.

MRCA and Contractor may agree upon rates to be charged for any of the items listed in this Article 7.2.3. Contractor shall promptly refund to MRCA any amounts (including associated mark-ups) in excess of the actual costs of such items.

7.2.4 Cost of Extra Work shall not include any of the following:

- .1 Superintendent(s).
- .2 Assistant Superintendent(s).
- .3 Project Engineer(s).
- .4 Project Manager(s).
- .5 Scheduler(s).
- .6 Estimator(s).
- .7 Small tools (Replacement value does not exceed \$300).
- .8 Office expenses including staff, materials and supplies.

- .9 On-site or off-site trailer and storage rental and expenses.
 - .10 Site fencing.
 - .11 Vehicles and equipment not used to complete the Extra Work.
 - .12 Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.
 - .13 Data processing personnel and equipment.
 - .14 Federal, state, or local business income and franchise taxes.
 - .15 Costs and expenses of any kind or item not specifically and expressly included in Article 7.2.3.
 - .16 Warranty.
- 7.2.5 As a condition to Contractor's right to an adjustment of the Contract Sum, Contractor must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to MRCA for verification and signature on the day the work is performed.
- 7.2.6 The Contract Sum will be adjusted for a delay if, and only if, Contractor demonstrates that all of the following conditions are met:
- .1 Condition Number One: The delay results in an extension of the Contract Time.
 - .2 Condition Number Two: The delay is caused solely by one or more of the following:
 - .1 An error or omission in the Contract Documents; or
 - .2 The MRCA's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Contractor; or
 - .3 The failure of the MRCA to perform any Contract obligation where the failure to so perform is not the result of any default or misconduct of the Contractor.
 - .4 A materially differing site condition pursuant to Article 3.15.
 - .3 Condition Number Three: The delay is not concurrent with a delay caused by an event other than those listed in Article 7.2.6.2.
 - .4 Condition Number Four: Critical path work was unavoidably delayed.
- 7.2.7 For each day of delay that meets all conditions prescribed in Article 7.2.6 the Contract Sum will be adjusted by a daily rate. Said daily rate shall not apply to delays occurring after Substantial Completion. The daily rate may not include expenses for Contractor's off-site operations, offices, etc. The adjustment may be calculated by one of two ways, whichever is lower:

- .1 The daily rate included in the Bid and specifically identified as the rate to be paid to Contractor for Compensable Delays.
 - .2 A negotiated daily rate based on substantiated expenses.
- 7.2.8 Except as provided in Articles 7 and 8, Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.
- 7.2.9. Proposed Change Orders shall include request for changes to the Contract Time. Requests to extend the Contract Time for previously approved Change Orders will not be accepted. Changes to the Contract Time will not be approved if critical path work was not affected.
- 7.3 FIELD ORDERS**
- 7.3.1 A Field Order is a Contract Document issued by the MRCA that orders the Contractor to perform Work. A Field Order does not require the agreement of Contractor, and shall be valid with or without the signature of Contractor. A Field Order may state that it does or does not constitute a change in the Work and may, but need not, entitle Contractor to an adjustment of the Contract Sum or Contract Time.
- 7.3.2 Upon receipt of a Field Order, Contractor shall promptly proceed to perform the Work as ordered in the Field Order notwithstanding any disagreement by the Contractor concerning whether the Work is extra.

ARTICLE 8 – CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

- 8.1.1 The date of commencement of the Work shall be set forth in the Notice To Proceed.

8.2 DELAY

- 8.2.1 Except and only to the extent provided otherwise in Articles 7 and 8, by signing the Agreement, Contractor agrees to bear the risk of delays to the Work that Contractor's bid for the Contract was made with full knowledge of this risk. In agreeing to bear the risk of delays to the Work, Contractor understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that delay the Work shall not excuse Contractor from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Contractor to an adjustment of the Contract Sum.

8.3 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

- 8.3.1 Subject to Article 8.3.2, the Contract Time will be extended for each day of delay for which Contractor demonstrates that all of the following conditions have been met; a time extension will not be granted for any day of delay for which Contractor fails to demonstrate compliance with the following conditions:
- .1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without

delaying Final Completion of the Work beyond the Contract Time. A delay is critical if and only to the extent the delay pushes Final Completion of the Work to a date that is beyond the Contract Time.

- .2 Condition Number Two: Within 7 days of the date the Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay, (even if the Contractor has not been delayed when the Contractor discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Contractor submits both a timely and complete Change Order Request that meets the requirements of Article 4.2.
- .3 Condition Number Three: The delay is not caused by:
 - .1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.15; or
 - .2 The financial inability, misconduct or default of the Contractor, a Subcontractor or supplier; or
 - .3 The unavailability of materials or parts.
- .4 Condition Number Four: The delay is caused by:
 - .1 Fire; or
 - .2 Strikes, boycotts, or like obstructive actions by labor organizations; or
 - .3 Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
 - .4 Rainfall exceeding 1" as measured at the nearest National Weather Service station, provided that Contractor notified MRCA immediately upon determining that no work can be performed that day due to rainfall, and provided that all Inclement Weather Days in the baseline schedule pursuant to Article 3.8 have been used; or
 - .4 A materially differing site condition pursuant to Article 3.15; or
 - .5 An error or omission in the Contract; or
 - .6 The MRCA's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Contractor; or
 - .7 The MRCA's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Contractor; or
 - .8 The failure of the MRCA to timely perform any Contract obligation unless such failure is due to Contractor's default or misconduct. Contractor must have previously notified MRCA of the potential for delay.

- .5 Condition Number Five: Contractor has taken all reasonable measures to avoid and minimize the delay and, notwithstanding such measures, the delay occurred.
- 8.3.2 If and only if a delay meets all conditions prescribed in Article 8.3.1, then a time extension will be granted for each regular work day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:
- .1 When two or more delays (each of which meet all conditions prescribed in Article 8.3.1) occur simultaneously or concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to Article 8.3.2, such concurrent critical delays shall be treated as a single delay for each such day.
 - .2 Contractor shall be entitled to a time extension for a day of delay that meets all requirements of Article 8.3.1 if the delay is simultaneous or concurrent with a delay that does not meet all seven conditions of Article 8.3.1.
- 8.3.3 Inclement Weather: The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. The weather days shall be shown on the schedule and if not used will become float. The Contractor will not be allowed a day-for-day weather delay when the contract is bid for construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. The contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the Work under construction from the effects of inclement weather.

8.4 COMPENSATION FOR DELAY

- 8.4.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of Contractor, its Suppliers and Subcontractors, and all persons and entities working under or claiming through Contractor in connection with the Project.
- 8.4.2 By signing the Agreement, the parties agree that the MRCA is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
- .1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:

- .1 Changes to correct errors or omissions, if any, in the Contract Documents.
 - .2 Changes resulting from the MRCA's decision to change the scope of the Work subsequent to execution of the Contract.
 - .3 Changes due to unforeseen conditions.
- .2 To suspend the Work or any part thereof.
 - .3 To delay the Work, including without limitation, delays resulting from the failure of the MRCA to timely perform any Agreement obligation and delays for MRCA's convenience. Contractor shall advise MRCA in writing that such a delay will occur, in advance of the delay.
- 8.4.3 Nothing in these General Conditions shall limit MRCA's ability to suspend or terminate the project as specified in the Agreement.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN

- 9.1.1 Within 10 days after receipt of the Notice of Intent to Award Bid as the apparent lowest responsible Bidder, and with the Agreement, Contractor shall submit to MRCA a Cost Breakdown of the Contract Sum. The Cost Breakdown shall itemize as separate line items the cost of each Work Activity and all associated costs. Insurance and bonds shall each be listed as separate line items. Subcontract amounts in excess of 5% of the Contract Sum shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the MRCA, shall become the basis for determining the cost of Work performed for Contractor's Applications for Payment.
- 9.1.2 The Cost Breakdown must be consistent with Contractor's Schedule of Bid Items.
- 9.1.3 The Cost Breakdown shall be coordinated with Contractor's Schedule of Work. Provide a separate line item for each part of the Work where payment requests may include materials or equipment purchased or fabricated and stored, but not yet installed. Each item in the Cost Breakdown shall be complete, with proportionate share of general overhead and profit for each item.
- 9.1.4 The Cost Breakdown shall be updated whenever a Change Order is approved.
- 9.1.5 Cost Proposals and Proposed Change Orders should be consistent with the Cost Breakdown.

9.2 PROGRESS PAYMENT

- 9.2.1 MRCA agrees to pay monthly to Contractor, subject to Article 9.3.4, an amount equal to 90% of the sum of the following:
- .1 Cost, as specified in the Cost Breakdown, of all Work in permanent place as of the date of the Contractor's Application For Payment, including all work in permanent place by Subcontractors as of that date.

- .2 Less amounts previously paid.
- .3 Less retention as specified in Agreement.

9.2.2 Actions and submittals that must precede or coincide with the initial progress payment request include, but are not limited to, the following:

- .1 List of subcontractors
- .2 Cost Breakdown
- .3 Performance and payment bonds
- .4 List of principal suppliers and fabricators
- .5 Certificates of Insurance
- .6 Schedule of Work
- .7 Submittal Schedule
- .8 Emergency Contact List
- .9 Safety Plan, Site Logistics Plan, Storm Water Pollution Prevention Plan (SWPPP) and Waste Management Plan
- .10 Copies of authorizations and licenses from governing authorities for performance of the Work

9.2.3 After Substantial Completion and subject to Article 9.3.4, MRCA will make any of the remaining progress payments.

9.2.4 Applications For Payment shall not include request for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts Contractor does not intend to pay a Subcontractor because of a dispute or other reason.

9.2.5 If required by MRCA, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and conditional releases upon progress payment or final payment and (2) unconditional waivers and releases of claims and stop notices, in such form determined by MRCA, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.2.6 Contractor warrants that, upon submittal of an Application For Payment, all Work, for which payment has been received from MRCA, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.2.7 At the sole discretion of MRCA, MRCA may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to MRCA. In such case, Contractor shall furnish evidence satisfactory to MRCA (1) of the cost of such materials and (2)

that such materials are under the exclusive control of Contractor. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve Contractor from sole responsibility for the care and protection of such materials; nor relieve Contractor from risk of loss to such materials from any cause whatsoever; nor relieve Contractor from its obligation to complete the Work in accordance with the Agreement; nor act as a waiver of the right of MRCA to require fulfillment of all terms of the Agreement. Nothing contained within this Article 9.2.7 shall be deemed to obligate MRCA to agree to payment for any non-incorporated materials or any part thereof, payment being in the sole and absolute discretion of MRCA.

9.3 APPLICATION FOR PAYMENT

- 9.3.1 No more than once per month, Contractor shall submit to MRCA an itemized Application For Payment, for the cost of the Work in permanent place, as approved by MRCA, which has been completed in accordance with the Contract Documents, less amounts previously paid, and meeting the requirements stated in the Agreement.
- 9.3.2 Contractor warrants that, upon submittal of an Application For Payment, all Work, for which payment has been received from MRCA, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.
- 9.3.3 Contractor shall first submit a draft or “pencil” Application for Payment. Within five (5) working days after the receipt, excluding Saturdays, Sundays and legal holidays, MRCA shall review the Application For Payment and either authorize payment or notify Contractor of unapproved items. Contractor shall have three (3) days to revise (if required) and resubmit a final Application For Payment, otherwise MRCA may authorize Payment in the amount that MRCA determines to be properly due without regard to such Application For Payment. Contractor’s signature on Applications for Payment shall be notarized upon MRCA request. An Application for Payment is not considered undisputed until approved, by signature by MRCA or MRCA’s representative, and all required items have been submitted.
- 9.3.4 Approval of all or any part of an Application For Payment may be withheld, and all or part of a previous Payment may be nullified and that amount withheld from a current Payment on account of any failure of Contractor to perform its obligations under the Contract Documents.
- 9.3.5 Subject to the withholding provisions of Article 9.3.4 and the Agreement, MRCA will pay Contractor the approved amount no later than 30 days after the Application for Payment is received.
- 9.3.6 Applications for Payment must be signed by a person authorized to sign legal documents on behalf of Contractor. Submit three (3) signed and original copies of each payment request to Owner. One copy shall include original signed

conditional and unconditional waivers and releases from both Contractor and Subcontractors as applicable, certified payroll, and other documents as required.

9.4 BENEFICIAL OCCUPANCY

9.4.1 MRCA reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to Contractor. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following condition: Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

9.5 SUBSTANTIAL COMPLETION

9.5.1 "Substantial Completion" means the stage in the progress of the Work, as determined by MRCA, when the Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair MRCA's ability to occupy and fully utilize the Work for its intended purpose and a Certificate of Occupancy has been issued.

9.5.2 When Contractor gives notice to MRCA that the Work is substantially complete, unless MRCA determines that the Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, MRCA will inspect the Work, and prepare and give to Contractor a comprehensive list of items (the "punch list") to be completed or corrected before establishing Substantial Completion. Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If MRCA's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, Contractor shall complete or correct such item. Contractor shall then submit a request for another inspection by MRCA to determine Substantial Completion. Costs for additional inspection by MRCA shall be deducted from any monies due and payable to Contractor.

9.5.3 When MRCA determines that the Work is substantially complete, and occupancy has been approved, the MRCA will prepare a Notice of Substantial Completion, which, when signed by MRCA, shall establish the date of Substantial Completion and the responsibilities of MRCA and Contractor for security, maintenance, utilities, insurance, and damage to the Work.

9.6 FINAL COMPLETION AND FINAL PAYMENT

9.6.1 Upon receipt of notice from Contractor that the Work is ready for final inspection, MRCA will make such inspection. Final Completion shall be when MRCA determines that the Work is fully completed and in accordance with the Contract Documents including without limitation satisfaction of all "punch list" items and determines that a Certificate of Occupancy has been issued. After receipt of the final undisputed Application For Payment, if MRCA determines that Final Completion has occurred, MRCA will issue the final Payment, less applicable retention.

- 9.6.2 Neither final payment nor any retention shall become due until Contractor submits all items required under the Contract.
- 9.6.3 The final payment, less applicable retention, shall be made, subject to the satisfaction of all other conditions to final payment and pursuant to the process described in Section 9.3.
- 9.6.4 MRCA will file a Notice of Completion within 10 days after Final Completion. The retention payment shall be made, subject to the satisfaction of all other conditions to retention payment, 60 days after the filing of the Notice of Completion..1 If a Notice of Completion is not filed, the retention payment shall be made, subject to the satisfaction of all other conditions to retention payment, 60 days after the date of Final Completion.
- 9.6.5 Acceptance of final payment by Contractor shall constitute a waiver of all claims, except those previously made in writing and identified by Contractor as unsettled at the time of the final Application For Payment.
- 9.6.6 Actions and submittals that must precede or coincide with the final payment request include, but are not limited to, the following:
- .1 Occupancy permits, Certificates of Release, and similar approvals by authorities having legal jurisdiction over the Work.
 - .2 Removal of temporary facilities and services.
 - .3 Removal of surplus materials, rubbish, and similar elements.
 - .4 Meter readings for utilities as of MRCA occupancy date.
 - .5 Change over information related to MRCA occupancy, use, operation, and maintenance.
 - .6 Final cleaning.
 - .7 Ensure that incomplete Work is not accepted and will be completed without undue delay.
 - .8 Advice on shifting insurance coverage.
 - .9 List of defective Work, recognized as exceptions to certificate of Substantial Completion.
 - .10 Completion of final punch list items.
 - .11 Identification of unsettled claims.
 - .12 Proof that taxes, fees, and similar obligations are paid.
 - .13 Waivers and releases.
- 9.6.7 Actions and submittals that must precede or coincide with the retention payment include, but are not limited to, the following:
- .1 Testing, adjusting, and balance records.
 - .2 Start-up performance reports.

- .3 MRCA training and orientations.
 - .4 Change of locks to MRCA system.
 - .5 Completion of Contract Closeout requirements.
 - .6 Delivery of Project record documents to MRCA, including but not limited to as-built drawings.
 - .7 Delivery of extra materials, products and/or stock.
 - .8 Operating and maintenance instruction manuals.
 - .9 Consent of surety to final payment.
 - .10 Warranties, guarantees and maintenance agreements.
 - .11 Unconditional waiver for final payment.
- 9.6.8 All required items shall be submitted in both digital and hard copy formats.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to employees and other persons who may be affected thereby, the Work and materials to be incorporated therein, and property at the Project site and adjoining property.

10.1.2 Contractor shall submit for MRCA approval a detailed plan for worker protection during the excavation of trenches five feet or more in depth. Such plan shall be submitted in advance of excavation and shall indicate the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

10.2 EMERGENCIES

10.2.1 In an emergency affecting the safety of persons or property, Contractor shall act to prevent or minimize damage, injury, or loss. Contractor shall promptly notify MRCA's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Contractor's action.

10.3 HAZARDOUS MATERIALS

10.3.1 Contractor shall, without disturbing the condition, notify MRCA in writing as soon as Contractor has knowledge of the discovery of any of the following conditions:

- .1 The presence of any material that the Contractor believes is hazardous waste;

- .2 Subsurface or latent physical conditions at the site differing from those indicated in the specifications; or
 - .3 Unknown physical conditions at the site of any unusual nature, different material for those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- 10.3.2 Pending a determination by MRCA of appropriate action to be taken, Contractor shall provide security measures adequate to prevent the hazardous waste or physical conditions from causing bodily injury to any person.
- 10.3.3 MRCA shall promptly investigate the reported conditions and determine, in MRCA's sole discretion, if the conditions do materially differ, or do involve hazardous waste.
- 10.3.4 The Contract Sum and/or Time will not be adjusted if conditions do not materially differ, are determined not to involve hazardous waste, or for baseless claims of hazardous conditions.

ARTICLE 11 – INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and MRCA from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Contract.

11.2 PERFORMANCE BOND AND PAYMENT BOND

11.2.1 Contractor shall furnish bonds covering the faithful performance of the Agreement and payment of obligations arising thereunder as specified in the Agreement.

ARTICLE 12 – QUALITY REQUIREMENTS

12.1 EXECUTION

12.1.1 Before proceeding to lay out the Work, verify layout information shown on Drawings, in relation to the property survey and existing benchmarks. If discrepancies are discovered, notify Owner promptly. Engage a land surveyor or professional engineer to lay out the Work using accepted surveying practices. Locate existing permanent benchmarks, control points, and similar reference points before beginning the Work. Contractor shall be responsible for schedule delay for unforeseen conditions that may have been identified in the project site survey.

It is Contractor's responsibility to examine the project site and after investigation, to decide for itself the character of materials, equipment and utilities to be encountered and all other existing conditions affecting the Work. It is also Contractor's responsibility to provide sufficient costs to cover the provision of all items of Work under existing conditions.

- 12.1.2 Locate the Work and components of the Work accurately, in correct alignment and elevation, as indicated. All work shall be produced plumb, level, square and true, or true to indicated angle, and with proper alignment and relationship between the various elements. Where space is limited, install components to maximize space available for maintenance and ease of removal for replacement. Conceal pipes, ducts, and wiring in finished areas unless otherwise indicated.
- 12.1.3 Provide blocking and attachment plates and anchors and fasteners of adequate size and number to securely anchor each component in place, accurately located and aligned with other portions of the Work. Where size and type of attachments are not indicated, verify size and type required for load conditions.
- 12.1.4 Make joints of uniform width. Where joint locations in exposed work are not indicated, arrange joints for the best visual effect. Fit exposed connections together to form hairline joints.
- 12.1.5 Start equipment and operating components to confirm proper operation. Remove malfunctioning units, replace with new units, and retest. Adjust equipment for proper operation. Adjust operating components for proper operation without binding. Test each piece of equipment to verify proper operation. Test and adjust controls and safeties. Replace damaged and malfunctioning controls and equipment.
- 12.1.6 Contractor shall take all measures necessary to preserve and protect existing and completed Work free from damage, deterioration, soiling and staining, until acceptance of the Work.
- 12.1.7 Unless more stringent requirements are indicated or specified, comply with manufacturer's instructions and recommendations, reference standard and building code research report requirements in preparing, fabricating, erecting, installing, applying, connecting and finishing the Work. Document and explain all deviations from reference standards and building code research report requirements and manufacturer's product installation instructions and recommendations, including acknowledgement by the manufacturer that such deviations are acceptable and appropriate for the project.
- 12.1.8 Contractor is fully responsible for quality control of all materials used on the Project. Materials shall be subject to inspection by the MRCA representative. If MRCA determines that materials do not comply with the Contract Documents, said materials shall be made to conform thereto. Material found to be unsatisfactory will be rejected and, if so ordered by MRCA representative, shall be immediately removed from the Site at the expense of the Contractor. If Contractor fails to comply with any such order, the MRCA representative may cause said unsatisfactory material to be removed, and shall require that the

defective material be replaced. The cost of the removal of the defective material, and the replacement thereof, shall be deducted from any money due, or to become due, to the Contractor.

12.1.9 Before delivering to the Project any dirt, rock, gravel, or sand, Contractor shall notify the MRCA representative of the source of said materials so the MRCA representative can have an opportunity to examine and test materials as necessary.

12.1.10 When no quality basis is prescribed, the quality shall be in accordance with the best accepted practices of the construction industry for the locale of the project, for similar projects, and in compliance with applicable codes, laws, rules and regulations of authorities having jurisdiction.

12.2 TESTS AND INSPECTION

12.2.1 Tests and inspections not explicitly assigned to Owner are Contractor's responsibility. Perform additional quality-control activities required to verify that the Work complies with requirements, whether specified or not. Testing and inspecting requested by Contractor and not required by the Contract Documents are Contractor's responsibility.

12.2.2 Notify testing agencies at least 24 hours in advance of time when Work that requires testing or inspecting will be performed. Submit additional copies of each written report directly to authorities having jurisdiction, when they so direct. Where indicated, engage a manufacturer's representative to observe and inspect the Work.

12.2.3 Regardless of whether original tests or inspections were Contractor's responsibility, provide quality-control services, including retesting and re-inspecting, for construction that replaced Work that failed to comply with the Contract Documents.

12.2.4 Prepare a record of tests and inspections. Include the following: Date test or inspection was conducted; Description of the Work tested or inspected; Date test or inspection results were transmitted to Architect; and Identification of testing agency or special inspector conducting test or inspection. Maintain log at Project site.

12.2.5 Work shall be subject to verification of quality by MRCA. Contractor shall cooperate by making Work available for observation, inspection and testing. Such verification may include observation, inspection and testing at mill, plant, shop, or project site locations where products for the Work are manufactured, fabricated, or assembled. Contractor shall provide all information and assistance necessary for verification of quality. Prior to expiration of guaranty period provided under the Contract, MRCA may exercise its right to re-inspection.

12.3 UNCOVERING OF WORK

12.3.1 If a portion of the Work is covered contrary to MRCA's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if

required in writing by MRCA's Representative, be uncovered for MRCA's Representative's observation and be replaced at Contractor's expense without adjustment of the Contract Time or the Contract Sum.

12.4 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.4.1 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- .1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the MRCA has neither Beneficially Occupied nor accepted as Substantially Complete); or
- .2 Are not accepted by the MRCA.

The Guarantee To Repair Period for equipment or systems which become fully operational and accepted subsequent to Substantial Completion will begin on the date of their written acceptance by MRCA.

12.4.2 Contractor shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (2) replace, repair, or restore to MRCA's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from MRCA, but in no case later than 10 days after receipt of such notice; and Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs resulting from such Defective Work.

12.4.3 Contractor's obligations under this Article 12 are in addition to and not in limitation of its warranty under Article 3.4 or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies MRCA may have under the Contract Documents or at law or in equity for Defective Work.

12.5.4 Acceptance of defective work, without specific written acknowledgement and approval of MRCA and, as applicable, authorities having jurisdiction, shall not relieve the Contractor of the obligation to correct such Work.

ARTICLE 13 – CONSTRUCTION SUSTAINABILITY REQUIREMENTS

13.1 GENERAL SUSTAINABILITY REQUIREMENTS

13.1.1 Contractor shall comply with all environmental and sustainability requirements noted in the Contract Documents. The following are general requirements:

- .1 Air: Employ construction practices that minimize dust production and combustion byproducts and abide by local air quality requirements.
- .2 Water: Avoid materials that can leach toxic chemicals into the ground water. Do not allow toxic chemicals to enter sewers or storm drains.
- .3 Soil: Protect against erosion and topsoil depletion.
- .4 Habitats: Protect natural habitats and ecological systems on facility site.
- .5 Noise: Minimize noise generation during construction. Operate power equipment in accordance with local noise restrictions.
- .6 Control of invasive plants: Contractor shall maintain an invasive plant free construction site. Clean vehicles prior to arrival at the site, if vehicles have been parked off of pavement. Any fill, rock, or additional topsoil needed shall be obtained from an MRCA-approved source. All areas disturbed by construction shall be re-vegetated using approved native plants. Reseeding of all areas disturbed and not otherwise planted with trees and shrubs or covered with mulch is required.

13.1.2 Contractor shall not willfully use excessive amounts of potable water or electricity.

13.2 WASTE MANAGEMENT

13.2.1 The Contractor shall develop a Waste Management Plan for MRCA approval. The Waste Management Plan shall employ processes that ensure the generation of as little waste as possible. Waste disposal in landfills shall be minimized. The Contractor shall reduce, reuse, and/or recycle, to the maximum extent feasible, the construction and demolition debris, green waste, and incidental waste generated by the project. All material unsuitable for recycling must be disposed of, in a legal manner, at public or private landfills outside the site. The waste management plan shall include at a minimum the following:

- .1 List of proposed materials to be reused or recycled.
- .2 List of recycling facilities, reuse facilities, landfills and other disposal area(s) to be used. Include name, location and phone number.
- .3 List of materials that cannot be recycled or reused with explanation or justification.
- .4 Storage and collection methods of waste and recyclables, handling procedures, and means of keeping recyclables free of contamination.

13.2.2 Contractor shall not burn waste materials.

13.2.3 The cost of all construction sustainability requirements in this Article 13 shall be considered as included in the Contract Sum.

13.3 STORMWATER POLLUTION PREVENTION PLAN

13.3.1 If the Project construction disturbs more than one acre of soil, a Storm Water Pollution Prevention Plan (SWPPP) is required per the California State Water

Resources Control Board. It is the responsibility of the Contractor to implement and maintain the SWPPP and file all reports. The Contractor shall have a Qualified SWPPP Practitioner (QSP). MRCA is the Legally Responsible Person (LRP). Prior to the start of construction, no work having the potential to cause pollution, as determined by the MRCA, shall be performed until the SWPPP measures are in place. Amendments to the SWPPP shall be made whenever there is a change in operation that will affect discharge of pollutants.

13.3.2 This Project lies within the boundaries of the Los Angeles Region of the Regional Water Quality Control Board and shall conform to all requirements of the current Construction General Permit.

13.3.3 The SWPPP shall follow the procedures and format set forth in the latest editions of the Los Angeles County department of Public Works "Construction Site Best Management Practices (BMP) Manual" (BMP Manual"), the "Storm Water Pollution Prevention Plan (SWPPP) Preparation Manual", and any other applicable provisions of the manuals, permits and Federal, State and local regulations that govern the Contractor's operations and storm water discharges from the Project site.

13.3.4 The Contractor shall keep one copy of the approved SWPPP and approved amendments at the project site and made available upon request.

13.3.5 Costs for the implementation, maintenance, and required reporting of the Storm Water Pollution Prevention Plan (SWPPP), shall be considered as included in the Contract Sum.

13.3.6 In addition to the procedures referenced in 13.3.3, Contractor shall comply with the following requirements:

- .1 Sediments shall not be discharged to the Storm Drain system or receiving waters.
- .2 Sediments generated on the Project site shall be contained within the Project site using appropriate BMPs.
- .3 No construction-related materials; waste, spills, or residue shall be discharged from the Project Site to streets, drainage facilities, receiving waters or adjacent property by wind or run-off.
- .4 Non-storm water runoff from equipment, vehicle washing, or any other activity shall be contained with the Project site using appropriate BMPs.
- .5 Erosion from exposed topsoil slopes and channels shall be prevented.
- .6 Minimize grading during the wet season. All erosion susceptible slopes shall be covered, planted or protected in any way that prevents sediment discharge from the Project site.

13.3.7 Review by the MRCA will not relieve the Contractor of the responsibility for the adequacy of the SWPPP or for full compliance with all applicable Federal, State and local laws and regulation that govern water quality.

ARTICLE 14 – TEMPORARY FACILITIES AND CONTROLS

- 14.1 Installation and removal of and use charges for temporary facilities shall be included in the Contract Sum unless otherwise indicated. Allow other entities to use temporary services and facilities without cost, including, but not limited to, Owner's construction forces, Landscape Architect, testing agencies, and authorities having jurisdiction.
- 14.2 Engage Installer of each permanent service to assume responsibility for operation, maintenance, and protection of each permanent service during its use as a construction facility before Owner's acceptance, regardless of previously assigned responsibilities.
- 14.3 Locate facilities where they will serve Project adequately and result in minimum interference with performance of the Work. Relocate and modify facilities as required by progress of the Work. Maintain facilities in good operating condition until removal.
- 14.4 Locate temporary roads and paved areas in same location as permanent roads and paved areas. Construct and maintain temporary roads and paved areas adequate for construction operations. Recondition base after temporary use, including removing contaminated material, re-grading, proof rolling, compacting, and testing.
- 14.5 Maintain access for fire-fighting equipment and access to fire hydrants.
- 14.6 Provide Project signs as indicated. Unauthorized signs are not permitted. Maintain and touchup signs so they are legible at all times.
- 14.7 Protect existing vegetation, equipment, structures, utilities, and other improvements at Project site and on adjacent properties, except those indicated to be removed or altered. Repair damage to existing facilities.
- 14.8 Avoid trapping water in finished work. Document visible signs of mold that may appear during construction.
- 14.9 Remove each temporary facility when need for its service has ended, when it has been replaced by authorized use of a permanent facility, or no later than Substantial Completion. Complete or, if necessary, restore permanent construction that may have been delayed because of interference with temporary facility. Repair damaged Work, clean exposed surfaces, and replace construction that cannot be satisfactorily repaired.

ARTICLE 15 – OPERATION AND MAINTENANCE DATA

- 15.1 Operations and maintenance manuals shall be submitted for project closeout. Submit each manual in final form prior to requesting inspection for Substantial Completion and at least fifteen (15) days before commencing demonstration and training.

- 15.2 Product Maintenance Manual: Assemble a complete set of maintenance data indicating care and maintenance of each product, material, and finish incorporated into the Work.
- 15.3 Operation and Maintenance Manuals: Assemble a complete set of operation and maintenance data indicating operation and maintenance of each system, subsystem, and piece of equipment not part of a system.
- 15.4 Manufacturers' Data: Where manuals contain manufacturers' standard printed data, include only sheets pertinent to product or component installed. Mark each sheet to identify each product or component incorporated into the Work. Identify data applicable to the Work and delete references to information not applicable.
- 15.5 Drawings: Prepare drawings supplementing manufacturers' printed data to illustrate the relationship of component parts of equipment and systems and to illustrate control sequence and flow diagrams. Coordinate these drawings with information contained in record Drawings to ensure correct illustration of completed installation. Do not use original project record documents as part of operation and maintenance manuals.
- 15.6 Product Information: Include the following, as applicable:
 - .1 Product name and model number.
 - .2 Manufacturer's name.
 - .3 Equipment identification with serial number of each component.
 - .4 Color, pattern, and texture.
 - .5 Material and chemical composition.
 - .6 Reordering information for specially manufactured products.
 - .7 Operating procedures.
 - .8 Precautions against improper use.
 - .9 License requirements including inspection and renewal dates.
 - .10 Inspection procedures.
 - .11 Repair instructions.
 - .12 Schedule for routine cleaning and maintenance.
 - .13 Types of cleaning agents to be used and methods of cleaning, and list of cleaning agents and methods of cleaning detrimental to product.
 - .14 List of items recommended to be stocked as spare parts.
- 15.7 Include copies of warranties and bonds and lists of circumstances and conditions that would affect validity of warranties or bonds.



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

Los Angeles River Center and Gardens
570 West Avenue Twenty-six, Suite 100
Los Angeles, California 90065
Phone (323) 221-9944 Fax (323) 441-8691

01 01 03 – SPECIAL CONDITIONS

SECTION CONTAINS:

- 1.01 Description
- 1.02 Scope of Work and Construction Completion Requirements
- 1.03 Schedule Requirements
- 1.04 Allowances
- 1.05 Verification of Existing Conditions
- 1.06 Materials and Equipment Delivery and Storage
- 1.07 Salvageable Materials
- 1.08 Permissible Schedule and Access
- 1.09 Temporary Fencing
- 1.10 Contractor's Use of Premises
- 1.11 Project Document Control
- 1.12 Existing Lead Paint or Lead and Asbestos Containing Materials

1.01 DESCRIPTION

- A. Work of this Section includes Special Conditions, as they apply to this specific Project. Requirements of the specifications and drawings are in addition to the requirements of the contract including the Scope of Work, Agreement, General Conditions, Technical Specifications, Geotechnical Report and other Project Documents.
- B. All reference to the word ARCHITECT or CIVIL ENGINEER shall be the same as CONSTRUCTION MANAGER.
- C. All reference to the word OWNER shall be the same as OWNER'S REPRESENTATIVE.

1.02 SCOPE OF WORK AND CONSTRUCTION COMPLETION REQUIREMENTS

- A. The work to be performed by the General Contractor shall conform to all the Contract Documents such as, but not limited to, the requirements of Division 1 as well as the General Conditions, Special Conditions, Project Specifications, all sheets contained within the contract documents and other related documents and shall include the furnishing of all layout, supervision, labor, services, materials, installation, cartage, hoisting, supplies, insurance, equipment, shoring, tools, and other facilities of every kind and description required for the prompt and efficient execution of the work described herein and to perform the work necessary or incidental to complete the Project, including installation of all items furnished within this bid package, in strict accordance with the Contract Documents.
- B. It is anticipated that the work described shall begin on May 12, 2025 and shall be completed within forty-five (45) calendar days.
- C. The schedule for the Project is based on a consecutive calendar day schedule. The CONTRACTOR'S bid shall include all overtime and premium time costs associated with the execution of the Project based on the requirements listed above.

- D. Completion of the Work includes punch list and approval activities. Punch list and contract items not completed prior to beneficial daily use and occupancy by the OWNER, CONTRACTOR shall be assessed liquidated damages and CONTRACTOR will complete remaining unfinished Work before or after park operation hours or as designated by the Owner's Representative. Overtime costs and/or premium time costs incurred for completion of punch list and contract items are the sole responsibility of the CONTRACTOR and are considered part of the Base Bid. The Owner will not consider additional compensation for punch list and contract items unless a part of a previously approved change order.
- E. It is critical that the Schedule dates set specific for the Work under Contract for this Project Site be achieved. Liquidated damages of **two hundred and fifty dollars (\$250)** per calendar day will be assessed for each day the project is complete beyond the contractual completion date.

1.03 SCHEDULE REQUIREMENTS

The following Project Schedule requirements are supplemental and in addition to those identified in the Scope of Work and General Conditions.

- A. Inclement Weather: The CONTRACTOR will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. Inclement Weather Days shall be allotted for in the Contractor's schedule for each winter weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and if not used will become project float. The CONTRACTOR will not be allowed a day-for-day weather delay when the contract is bid for construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. The CONTRACTOR is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the Work under construction from the effects of inclement weather.

If the weather is unusually severe in excess of the NOAA data norm and prevents the CONTRACTOR from beginning work at the usual daily starting time, or prevents the CONTRACTOR from proceeding with seventy-five (75%) percent of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.

The duration for items listed on the schedule are Work Days to complete the specific schedule item. The Dates associated with each schedule item reflect calendar days taking into account all days that are restricted by ordinance or holiday observance. The duration for each scheduled activity is based on the nominal production of a five person work crew. This method of calculating scheduled item durations shall in no way dictate means and methods or workforce size to the contractor.

The inclement weather allowance is included within the total contract duration of the project.

- B. Monthly Progress Schedule: The CONTRACTOR shall submit to the CONSTRUCTION MANAGER a monthly schedule to reflect the current and actual progress and sequence of work. The schedule shall be totally separate and apart from the original CPM Schedule and any activities significantly behind the Baseline CPM Schedule shall clearly be identified.
- C. Recovery Schedule: The CONTRACTOR shall also, if requested by the CONSTRUCTION MANAGER, provide revised schedules within ten (10) calendar days, if at any time the CONSTRUCTION MANAGER and/or OWNER feel the completion date of the project is in jeopardy. The revised schedule shall be designed to show how the CONTRACTOR intends to accomplish the work in order to meet the original completion date. The CONTRACTOR shall modify any portion(s) of the schedule that become infeasible due to "activities behind schedule" or for any other valid reason. CONTRACTOR will provide documentation that justifies any schedule changes. Any activity that cannot be completed by its original completion date shall be deemed to be "behind schedule".
- D. Float: It is agreed that the OWNER owns the "Float" on this Project. If CONTRACTOR submits a Baseline Schedule or Revised Schedule indicating a date of completion earlier than the specified Contract Completion Date for the Project, acceptance of the Revised Schedule shall not entitle the CONTRACTOR to any delay claim or disruption of damages or any other damages due to any such Revised Schedule.
- E. Delay of Progress Payment: CONTRACTOR agrees that failure to submit the Monthly Progress Schedule or any other Revised and/or Recovery Schedules requested may result in delay of payment to the CONTRACTOR.
- F. CONTRACTOR shall provide a narrative with each monthly progress schedule should the CONTRACTOR require significant revisions to the sequence of work.

1.04 ALLOWANCES AND BID ALTERNATES

- A. Owner Allowance
 - 1. The CONTRACTOR shall include within the Total Price an allowance amount equivalent to twenty thousand dollars (\$20,000). The allowance amount has already been inserted on the Bid Submission Form by the Owner and the CONTRACTOR shall acknowledge the increase to their base bid amount by the aforementioned allowance be adding the values together and inserting the Total Price.
 - 2. The allowance shall be identified as an individual line item on the Schedule of Values.
 - 3. The allowance shall not be used unless the CONTRACTOR receives formal written direction from the Owner and/or its Representative identifying additional work at which time the CONTRACTOR shall submit to the Owner for its consideration and approval or disapproval the cost associated with the work. Written notification clearly identifying the additional scope of work required from the CONTRACTOR and the agreed upon

dollar amount associated with the work shall be approved by the Owner before such work is performed. The use of the allowance amount shall be at the sole discretion of the Owner.

4. Any funds remaining in the Allowance at the completion of the Project shall remain unspent and allocated to the Owner via a deductive Change Order.

B. Bid Alternates: NONE

1.05 VERIFICATION OF EXISTING CONDITIONS

- A. It is the responsibility of the CONTRACTOR to examine the site of the Work and after investigation, to decide for itself the character of materials, equipment and utilities to be encountered and all other existing conditions affecting the Work. It is also the CONTRACTOR'S responsibility to provide sufficient costs to cover the provision of all items of Work under existing conditions referred to herein.
- B. Prior to the completion and submittal of shop drawings, and no later than five (5) days after Notice of Award, the CONTRACTOR shall meet with the CONSTRUCTION MANAGER and survey the Project Site and stake the entirety of the property line with 5' offsets. Any existing conditions shall be documented and reflected in the shop drawing submittal. CONTRACTOR may be deemed responsible for schedule delay for unforeseen conditions that may have been identified in the Project Site survey.
- C. Prior to the start of construction, the CONTRACTOR shall coordinate with the CONSTRUCTION MANAGER to ensure all mitigation measures pursuant to the contract required prior to construction have been performed. This may include but is not limited to Biologist Survey and approval, and the implementation of all BMPs pursuant to the approved SWPPP.
- D. Underground plumbing and points of connection are identified for general design and planning purposes. The CONTRACTOR shall verify the existing conditions of the restrooms and plumbing locations before beginning the work based on the existing topographic survey and planned improvements.

1.06 MATERIALS AND EQUIPMENT DELIVERY AND STORAGE

- A. The CONTRACTOR shall contact the CONSTRUCTION MANAGER forty-eight (48) hours prior to the anticipated delivery of any materials and equipment for site access and coordination. Haul Routes and hours shall be in accordance with the local municipality requirements.
- B. The CONTRACTOR shall include within the base bid all components, labor, equipment, material and services associated with the delivery of equipment to the project site and stored by the CONTRACTOR at an onsite location. Storage of any materials on the adjacent properties will not be permitted.
- C. CONTRACTOR shall store all materials and equipment within the designated Contractor Staging Area as determined by the CONTRACTOR and CONSTRUCTION MANGER after award of bid.

- D. CONTRACTOR and its subcontractors shall coordinate with the CONSTRUCTION MANAGER in order to avoid impact to the project site during large material and/or equipment deliveries. In no event shall the CONTRACTOR and/or its subcontractors be allowed to stage material in the adjacent roadways or parking lots.
- E. Haul Route – If the CONTRACTOR intends to import and/or export more than 1,000 CY of material then Haul Route Approval shall be obtained from the local municipality at the CONTRACTOR's expense.

1.07 SALVAGEABLE MATERIALS

- A. There are currently no salvageable items anticipated.

1.08 PERMISSIBLE SCHEDULE AND ACCESS

- A. CONTRACTOR shall comply with the most stringent construction hours as mandated by the local governing jurisdiction.
- B. Work may be conducted during Saturdays and evening hours, ONLY when written notification to the CONSTRUCTION MANAGER has been submitted and formally approved within **forty-eight (48) hours** for the anticipated schedule of Work activities. If the CONTRACTOR, Subcontractors, or one of their fabricators elects to work other than normal working hours, more than 8 hours per day, or more than 40 hours per week, on items that require inspection by the Owner's deputy inspector, the premium cost of the overtime pay for the inspector shall be deducted from the Contract. The CONTRACTOR'S Superintendent or an approved alternate shall be present at the site at all times when the CONTRACTOR or his sub-contractor are performing work at the site. Such work must comply with mitigation measures pursuant to the contract.
- C. CONTRACTOR shall ensure that all utility shutdowns are scheduled during off hours and temporary power required for trades to continue Working on this scope of Work under Contract shall be supplied by the CONTRACTOR. CONTRACTOR shall provide written notification to CONSTRUCTION MANAGER forty-eight (48) hours in advance of any shutdowns and/or interruptions to any site utilities. CONTRACTOR shall ensure that temporary power is available for Owner's use at Project Site during said shutdowns, if necessary.

1.09 TEMPORARY BARRICADE

- A. As the work will occur in a heavily trafficked area, temporary exterior construction barricade is anticipated to secure the work area. The contractor shall secure the work area with delineators and/or barricades to ensure a safe environment and to prevent public access to the active construction work areas.
- B. Moving and relocation of temporary barricades and patching of holes will be the responsibility of the CONTRACTOR.

1.10 CONTRACTOR'S USE OF PREMISES

- A. CONTRACTOR shall coordinate the work of all trades with the CONSTRUCTION MANAGER. CONTRACTOR shall sequence, coordinate, and perform the Work to impose minimum hardship on the operation and use of the existing facilities improvements, Project site property, and new Work against dust, dirt, weather, damage, vandalism, and maintain and relocate all protection to accommodate progression of the work.
- B. CONTRACTOR will be responsible for supplying temporary toilet facilities for use by all trades including during construction of the Work under this contract. Trades will not use any of the OWNER'S or CONSTRUCTION MANAGER'S facilities.
- C. CONTRACTOR shall move any items in their area, which interferes with his or her operations. CONTRACTOR is also responsible for protection and dust control of the surrounding properties. CONTRACTOR shall leave the premises and the items in a clean state at the conclusion of Work in process, or at conclusion of Workday, whichever comes first.
- D. If CONTRACTOR fails to provide required clean up in areas under construction as covered under the Contract, whether or not a direct result of the CONTRACTOR'S Work, the CONTRACTOR shall be responsible for paying and/or sharing in the cost to have the areas cleaned.
- E. Areas as authorized by the CONSTRUCTION MANAGER to the CONTRACTOR to be utilized for laydown, materials storage or project access will be returned to the original condition.
- F. CONTRACTOR shall confine entrance and exiting to the Project site and/or facilities to routes designated by the CONSTRUCTION MANAGER.
- H. CONTRACTOR shall not permit the use of portable and/or fixed radios or other types of sound producing devices including walkmans, Bluetooth speakers, and similar devices.
- I. CONTRACTOR shall be required to protect the existing conditions of the park, access roads and bridges included but not limited to the California Building exterior doors, thresholds, existing flooring, walls, atrium, etc. As such, it is mandatory that protective materials are placed over crossings and frequent travel routes to minimize impact from heavy equipment.

1.11 PROJECT DOCUMENT CONTROL

- A. At the close of each working day, the CONTRACTOR shall submit a daily report to the OWNER or CONSTRUCTION MANAGER documenting the name of all subcontractors, the quantity of workers for each subcontractor, the hours worked, the work performed, and any operating equipment. Failure to provide accurate and current daily reports will be grounds for delayed payment to the CONTRACTOR.

1.12 EXISTING LEAD PAINT OR LEAD & ASBESTOS CONTAINING MATERIALS

- A. CONTRACTOR shall be responsible for providing protective gear and equipment to its agents and employees and for ensuring its proper utilization in the event of an encounter with asbestos in the debris being removed and the demolition of structures containing (and suspected to contain) asbestos material under the Contract. Any material not specifically

listed as lead and/or asbestos-containing but suspected as being lead and/or Asbestos containing, shall be considered lead and/or asbestos-containing and abated in accordance with the abatement specifications.

END OF SECTION

Labor Compliance Program

March 19, 2008

PREPARED BY

**Elizabeth Jordan
Project Manager,
Labor Compliance Officer**

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

**LABOR COMPLIANCE PROGRAM
IMPLEMENTATION PLAN & OPERATIONAL MANUAL**

Table of Contents

Section

I. Introduction

II Labor Compliance Program

III. Implementation Plan

IV. Operational Manual

- Site Visitation /Interviewing Requirements

V. Procedures

- Certified Payroll Verification
- Labor Compliance Site Monitoring

VI. Forms

- Labor Compliance Prevailing Wage Handout
- California Code of Regulations Checklist
- Apprentices on Public Works
- Excerpts from California Labor Code Relating to Apprentices on Public Works (DAS 10)
- Public Works Contract Award Information (DAS 140)
- Training Funds Contributions (CAC 2)
- Contractor Fringe Benefit Statement
- Monthly Utilization Report (sample)
- Certified Payroll Reporting (sample)
- DIR Public Works Payroll Reporting Form A-1-131(2-80)
- Prevailing Wage Determination (sample)
- Rules of Engagement
- Labor Compliance Site Visitation Interview Form
- Site Visitation Log
- Pre-Award Letter (sample)
- Post-Award Letter (sample)
- 1st Request for Certified Payrolls Letter (sample)
- Missing Documents List
- Certified Payroll Worksheet
- Certified Payroll Correction Letter (sample)
- Report of Action for Prevailing Wage Violations

Section I

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM

INTRODUCTION

The Mountains Recreation and Conservation Authority institutes this Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of state and federally funded public works contracts.

This program is applicable to all public works projects which are funded under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84), the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50) and/or any other funding source which requires a Labor Compliance Program and which commence construction after April 1, 2003.

California Labor Code Section 1770, *et seq.* requires that contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This labor compliance program ("LCP") contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as MRCA policies and contract provisions, which include, but are not limited to, the following:

1. Contractors' payment of applicable general prevailing wage rates.
2. Contractors' employment of properly registered apprentices.
3. Contractors' providing certified payroll records upon request but not less than weekly.
4. Programs monitoring MRCA construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Programs conducting pre-job conferences with contractors/subcontractors.
6. Programs withholding contract payments and imposing penalties for noncompliance.
7. Programs for the preparation and submittal of annual reports.

The Labor Compliance Officer ("LCO") is the MRCA's representative for enforcement of the LCP.

Section II

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM

LABOR COMPLIANCE PROGRAM

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM

TABLE OF CONTENTS

	<u>Page</u>
Introduction	
I. Public Works Subject to Prevailing Wage Laws.	1
A. Types of Contracts to Which Prevailing Wage Requirements Apply.	1
B. Applicable Dates for Enforcement of the LCP	1
II. Competitive Bidding on MRCA Public Works Contracts.	2
III. Job Start Meeting.	2
IV. Review of Certified Payroll Records.	3
A. Certified Payroll Records Required.	3
B. Apprentices.	4
C. Audit of Certified Payroll Records.	5
V. Reporting of Willful Violations to the Labor Commissioner.	5
A. Failure to Comply with Prevailing Wage Requirements.	5
B. Falsification of Payroll Records, Misclassification of Work and/or Failure to Accurately Report Hours of Work.	6
C. Failure to Submit Certified Payroll Records.	6
D. Failure to Make Employee Payments.	6
E. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices.	6
F. Taking of Kick Backs	6
VI. Enforcement Action.	6
A. Duty of the Awarding Body.	6
B. Withholding Contract Payments when Payroll Records are Delinquent or Inadequate.	6
C. Withholding for Violation for not Paying the Per Diem Prevailing Wages.	7
D. Forfeitures Requiring Approval by the Labor Commissioner.	8

E. Determination of Amount of Forfeiture by the Labor Commissioner.....	8
F. Deposits of Penalties and Forfeitures Withheld.....	9
G. Debarment Policy.....	10
VII. Notice of Withholding and Review Thereof.....	10
A. Notice of Withholding of Contract Payments (NWCP).....	10
B. Review of NWCP.....	10
VIII. Distribution of Forfeited Sums.....	11
IX. Outreach Activities.....	12
A. Providing Information to the Public.....	12
B. In-service Management training on the Labor Compliance Program	12
X. Annual Reports.....	13
A. Annual Report on Prevailing Wage Monitoring to the AUSD Superintendent and Board of Education.....	13
B. Annual Report on the AUSD Labor Compliance Program to the Director of the Department of Industrial Relations....	13
ATTACHMENTS	
A. Checklist of Labor Law Requirements for Review at Job Start Meetings.....	14
B. Audit Record Form	17
C. Notice of Deadline for Forfeitures.....	19
D. Notice of Withholding of Contract Payments.....	20
E. Notice of Transmittal.....	23
F. Notice of Opportunity to Review Evidence Pursuant To Labor Code Section 1742(b).....	24
G. Prevailing Wage Hearing Regulations, 8 CCR Sections 17201-17270	27

INTRODUCTION

The Mountains Recreation and Conservation Authority institutes this Labor Compliance Program (“LCP”) for the purpose of implementing its policy relative to the labor compliance provisions of state and federally-funded public works contracts and specifically to comply with the provisions of Labor Code section 1771.7 pertaining to the use of funds derived from either the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84), the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50) and/or any other funding source which requires a Labor Compliance Program. This LCP contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as MRCA policies and contract provisions.

The California Labor Code Section 1770, et seq., require that contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In establishing this LCP, the MRCA adheres to the statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. Further, it is the intent of the MRCA to actively enforce this LCP by monitoring MRCA construction sites for the payment of prevailing wage rates, and by requiring contractors and subcontractors having workers on MRCA sites to submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, Mountains Recreation and Conservation Authority will modify the affected portions of this program accordingly.

SECTION I
PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720 *et seq.*, and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Prevailing Wage Requirements Apply

As provided in Labor Code section 1771.8(a), an awarding body that chooses to use funds derived from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84), the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 and/or any other funding source which requires a Labor Compliance Program shall initiate and enforce a Labor Compliance Program as described in subdivision (b) of section 1771.5 of the Labor Code with respect to that public works project. Accordingly, upon approval by the Director of the Department of Industrial Relations, this awarding body LCP shall apply to public works using funds derived from those Bond Acts which commence on or after April 1, 2003.

B. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body Labor Compliance Programs is established by Section 16425 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the Labor Compliance Program until after the program has received initial or final approval.

SECTION II
COMPETITIVE BIDDING ON MRCA PUBLIC
WORKS CONTRACTS

The MRCA publicly advertises upcoming public works projects to be awarded according in a competitive bidding process. All MRCA bid advertisements (or bid invitations) and public works contracts shall contain appropriate language concerning the requirements of the Labor Code.

SECTION III
JOB START MEETING

After the MRCA awards the public works contract, and prior to the commencement of the work, a mandatory Job Start meeting (Pre-Job conference) shall be conducted by the Labor Compliance Officer with the contractor and those subcontractors listed in its bid documents.

At that meeting, the LCO will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the MRCA, and the prohibition against discrimination in employment.

The LCO will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements (presented as Attachment A to this document) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Section 1770 *et seq.*);
2. The contractor's duty to employ registered apprentices on public works projects (Labor Code Section 1777.5);
3. The penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment (Labor Code Sections 1775, 1777.7, and 1813);
4. The requirement to maintain and submit copies of certified payroll records to the MRCA, on a weekly basis, as required (Labor Code Section 1776), and penalties for failure to do so (Labor Code Section 1776(g)); The requirement includes and applies to all subcontractors performing work on MRCA projects even if their portion of the work is less than one half of one percent of the total amount of the contract.
5. The prohibition against employment discrimination (Labor Code Sections 1735 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended);
6. The prohibition against taking or receiving a portion of an employee's wages (Labor Code Section 1778) (kickback);
7. The prohibition against accepting fees for registering any person for public works (Labor Code Section 1779) or for filing work orders on public works (Labor Code Section 1780);
8. The requirement to list all subcontractors that are performing one-half of one percent of the total amount of the contract (Public Contract Code Section 4100 *et seq.*);
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor Code Section 1021 and under California Contractors License Law. Also, see Business and Professions Code Section 7000, *et seq.*);

10. The prohibition against unfair competition (Business and Professions Code Sections 17200-17208);
11. The requirement that the contractor and subcontractor be properly insured for Workers' Compensation (Labor Code Section 1861);
12. The requirement that the contractor abide by the Occupational Safety and Health laws and regulations that apply to the particular public works project.

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the LCO relative to the items contained in the Labor Law Requirements Checklist. The checklist will then be signed by the contractor's representative and the MRCA's LCO, **a representative of each subcontractor**, and the LCO.

At the Job Start meeting, the LCO will provide the contractor with a copy of the MRCA's LCP package which includes: a copy of the approved LCP, the checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll record forms, fringe benefit statements, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861).

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors.

SECTION IV

REVIEW OF CERTIFIED PAYROLL RECORDS

A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on MRCA projects which are subject to the LCP. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid.

1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the Mountains Recreation and Conservation Authority LCO as required. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor or each subcontractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Officer at any time and shall be provided within 10 days following the receipt of the request.

2. Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them, rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done.

The contractor shall provide the records required under this section to the MRCA within five (5) days of each payday, and available for inspection by the Department of Industrial Relations, and shall permit representatives of each to interview tradesworkers during working hours on the project site.

3. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code section 1775.

4. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts, that are due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day and 40 hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage determination.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed. Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information to the apprenticeship committee for each apprenticeable craft or trade in the area of the Project;
2. Request dispatch of apprentices from the applicable Apprenticeship Program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work; and
3. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.

If the contractor is registered to train apprentices, it shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

C. Audit of Certified Payroll Records

Audits shall be conducted by the LCO, and shall also be conducted at the request of the Labor Commissioner to determine whether all tradesworkers on project sites have been paid according to the prevailing wage rates.

The audit record form (presented as Attachment B) demonstrates the sufficient detail that is necessary to verify compliance with Labor Code requirements.

SECTION V
REPORTING OF WILLFUL VIOLATIONS TO
THE LABOR COMMISSIONER

If an investigation reveals that a willful violation of the Labor Code has occurred, the LCO will make a written report to the Labor Commissioner which shall include: (1) an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked, (2) the classification of workers employed on the public works contract. Six (6) types of willful violations are reported:

- A. Failure to Comply with Prevailing Wage Rate Requirements Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and MRCA contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.
- B. Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work Falsification of payroll records and failure to accurately report hours of work is

characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records.

- C. Failure to Submit Certified Payroll Records The contractors and subcontractors shall have ten (10) days upon notification by the LCO in which to comply with the requirement of submittal of weekly and/or to correct inaccuracies or omissions that have been detected.
- D. For Failure to Pay Fringe Benefits Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.
- E. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner, as a willful violation, upon completion of an investigation and audit.
- F. For the taking of Kickbacks Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

SECTION VI **ENFORCEMENT ACTION**

A. Duty of the Awarding Body

The Mountains Recreation and Conservation Authority, as the awarding body having an approved LCP, has a duty to the Director of the Department of Industrial Relations to enforce Labor Code section 1720 *et seq.*, and the procedural regulations of the Department of Industrial Relations in a manner consistent with the practice of DLSE and regulations found at Title 8, California Code Regulations, Section 16000 *et seq.*

B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

1. "Withhold" means to cease payments by the awarding body, its agents or others who pay on its behalf to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.

2. "Contracts" except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding, pursuant to the Labor Code, Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;
3. "Delinquent payroll records" means those not submitted on the basis set forth in the MRCA Contract and the LCP;

4. "Inadequate payroll records" are any one of the following:
 - a. A record lacking the information required by Labor Code Section 1776;
 - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;
 - c. A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are *de minimus*.

Pursuant to Labor Code Section 1776, the contractor shall, as a penalty to the MRCA, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

C. Withholding for Violation for Not Paying the Per Diem Prevailing Wages

1. "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of the contractor or subcontractor:
 - a. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000, *et seq.*;
 - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8 CCR Section 16000 *et seq.* and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification, or trade in which they were employed and the amounts paid;
 - c. Estimated amounts of "illegal taking of wages"; and
 - d. Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council.
2. Provisions relating to the penalties under Labor Code Sections 1775, and 1813:
 - a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the MRCA, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.
 - b. Pursuant to Labor Code section 1813, the contractor shall, as a penalty to the MRCA on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week.

D. Forfeitures Requiring Approval by the Labor Commissioner

1. "Forfeitures" are the amounts of unpaid penalties and wages assessed by the MRCA for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both.

2. “Failing to pay the correct rate of prevailing wages” means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Program, and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (§§ 17201 through 17270). Regardless of what is defined as prevailing “wages in contract terms, noncompliance with the following are considered failures to pay prevailing wages:
 - a. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in Title 8 CCR Section 16000 and Labor Code Section 1771.
 - b. Failure to provide complete and accurate payroll records, as required by Labor Code Section 1776;
 - c. Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program;
 - d. Accepting or extracting kickbacks, in violation of Labor Code Section 1778;
 - e. Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code Section 1779;
 - f. Failure to pay overtime for work over 8 hours in any one day or 40 hours in any one week, in violation of Labor Code sections 1813, 1815, or Title 8 CCR section 16200(a)(3)(F).

E. Determination of Amount of Forfeiture by the Labor Commissioner

1. Where the LCO requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:
 - a. The date that the public work was accepted, and the date that a notice of completion was filed;
 - b. Any other deadline which, if missed, would impede collection;
 - c. Evidence of violation in narrative form;
 - d. Evidence that an “audit” or “investigation” occurred in compliance with Title 8 CCR section 16432;
 - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation; or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position;
 - f. Where the MRCA seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor has unsuccessfully contended that the cause of violation was a mistake, inadvertence, or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775;
 - g. Where the MRCA seeks only wages or a penalty less than \$50 per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a

mistake, inadvertence, or neglect, then the file should include the evidence as to the contractor's knowledge of its obligation, including the Program's communication to the contractor of the obligation in the bid invitations, at the pre-job conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code Section 1775;

- h. The previous record of the contractor in meeting prevailing wage obligations.
2. The file or report shall be served on the Labor Commissioner not less than 30 days before the final payment or, if that deadline has passed, not less than 180 days following the filing of the notice of completion as long as funds remain in the contract.
3. A copy of the file or report shall be served on the contractor at the same time as it is sent to the Labor Commissioner.

The MRCA may exclude from the documents served on the contractor/subcontractor or surety copies of documents secured from these parties during an audit, investigation, or meeting if those documents are clearly referenced in the file or report.

4. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due.
5. The determination of the forfeiture by the Labor Commissioner is effective on the following date for Labor Compliance Programs having **initial approval** pursuant to Section 16426 of the California Code of Regulations: on the date the Labor Commissioner serves by first class mail on the Mountains Recreation and Conservation Authority and on the contractor, an endorsed copy of the proposed forfeiture, or a drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor is effective if made on the last address supplied by the contractor in the record.

The Labor Commissioner's approval, modification, or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

F. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the MRCA shall deposit penalties and forfeitures into its General Fund.
2. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the Mountains Recreation and Conservation Authority are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State and the Mountains Recreation and Conservation Authority, as the court may decide.
3. All amounts recovered by suit brought by the Labor Commissioner, and to which the Mountains Recreation and Conservation Authority is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code Section 1775, and which have not been paid to the worker or irrevocably committed on the

worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code Section 96.7.

G. Debarment Policy

1. It is the policy of the MRCA that the public works prevailing wage requirements set forth in the California Labor Code, Section 1720-1861, be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the labor code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

SECTION VII
NOTICE OF WITHHOLDING AND REVIEW THEREOF

A. **Notice of Withholding of Contract Payments**

After determination of the amount of forfeiture by the Labor Commissioner, the MRCA shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body. **A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the MRCA is found as Attachment D to this document.**

B. **Review of NWCP**

1. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request to the office of the LCP that appears on the NCWP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.
2. Within ten days following the receipt of the request for review, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. **A copy of the required Notice of Transmittal to be utilized by the MRCA is found as Attachment E to this document.**
3. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly

disclosed to the contractor or subcontractor. **A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Attachment F to this document.**

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director has adopted regulations setting forth procedures for hearings under this subdivision. **The regulations are found as Attachment G to this document.**

4. An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
5. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.
6. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
7. This procedure shall provide the exclusive method for review of a NWCP by the MRCA to withhold contract payments pursuant to Section 1771.7.

SECTION VIII

DISTRIBUTION OF FORFEITED SUMS

1. Before making payments to the contractor of money due under a contract for public work, the MRCA shall withhold and retain therefrom all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the MRCA until receipt of a final order that is no longer subject to judicial review.
2. Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the MRCA shall not disburse any contract payments withheld.
3. From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the

prevailing wage rate shall have **PRIORITY** over all Stop Notices filed against the prime contractor.

4. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the MRCA that has enforced this chapter pursuant to Section 1771.7.

SECTION IX **OUTREACH ACTIVITIES**

To ensure the successful implementation of the MRCA's Labor Compliance Program, there shall be several outreach activities initiated and maintained.

A. Providing Information to the Public

The Labor Compliance Officer shall be responsible for communication and outreach activities relative to public information on the MRCA's Labor Compliance Program:

1. Regular presentations to contractors at all MRCA Job Walk Meetings (Pre-Bid conferences) and Job Start Meetings (Pre-Job conferences);
2. Ongoing communication via correspondence and with workers at MRCA job sites when review of the certified payroll records reveals the possibility of prevailing wage violations.

B. In-service Management training on the Labor Compliance Program

The Labor Compliance Program shall provide ongoing management in-servicing and workshops for Facilities, Business, Accounting and legal staff relative to the terms, requirements and administration of the Labor Compliance Program.

SECTION X
ANNUAL REPORTS

A. Annual Report on Prevailing Wage Monitoring to the Executive Director and Advisory Committee

The LCO will submit to the Executive Director and Advisory Committee an annual report on prevailing wage monitoring which will include the following information:

1. Progress report on the LCP.
2. Fiscal year-end summary of:
 - a. Monitoring activities
 - b. Record keeping activities
 - c. Labor Code violations identified and reported to DLSE
 - d. Statistical analysis of the prevailing wage violations on MRCA public works projects
 - e. Summary of outreach activities

B. Annual Report on the LCP to the Director of the Department of Industrial Relations

The LCO will submit to the Director of the Department of Industrial Relations an annual report on the operation of its LCP within 60 days after the end of its fiscal year, or accompany its request for an extension of initial approval, whichever comes first. The annual report will contain, as a minimum, the following information:

1. Number of public works contracts awarded using Bond Act funds, and their total value;
2. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates; the total amount withheld from money due the contractors; and the total amount recovered by action in any court of competent jurisdiction;
3. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction; and
4. A special summary of all audits that were conducted upon the request of the Labor Commissioner.

Copies of this report will be distributed to the Director of the Department of Industrial Relations, the Mountains Recreation and Conservation Authority Executive Director and Advisory Committee.

ATTACHMENT A

**MOUNTAINS RECREATION AND CONSERVATION AUTHORITY
LABOR COMPLIANCE PROGRAM**

**CHECKLIST OF LABOR LAW REQUIREMENTS
FOR REVIEW AT JOB START MEETINGS**

(In accordance with CCR Section 16430)

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors.

The contractor is responsible for obtaining and complying with all applicable general prevailing wage rates for tradesworkers and any rate changes, which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects per Labor Code Section 1777.5;

3. Penalties

Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit accurate certified payroll records upon request, failure to employ apprentices, and for failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813.

4. Certified Payroll Records

Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request.

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly to the LCO. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated "No Work" for that week.

5. Nondiscrimination in Employment

Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:

a. Equal Employment Poster

The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project.

b. Records

The contractor and each subcontractor shall maintain accurate records of employment information as required by the Monthly Employment Utilization Report. This report shall specify the ethnicity and gender for each employee in a craft, trade, or classification.

c. Reports

A Monthly Employment Utilization Report for the contractor **and** for each of its subcontractors is required to be completed and submitted via fax to the MRCA Labor Compliance Program Office each month by no later than the fifth day of that month. Reports are to be for the previous month's work and are to be project specific. If no work was performed during that month, the form shall clearly state "No Work."

6. Kickback Prohibited

Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages;

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work (Labor Code Section 1779); or for filling work orders on public works contracts (Labor Code Section 1780);

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Government Code Section 4100, et seq.);

9. Proper Licensing

Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed (Labor Code Section 1021 and Business and Professions Code Section 7000, et seq. under California Contractors License Law);

10. Unfair Competition Prohibited

Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code Sections 17200-17208);

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code Section 3700 (Labor Code Section 1861);

12. OSHA

Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

In accordance with federal and state laws, and with MRCA policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

For the Contractor:

For the MRCA:

Signature Date

Signature Date

**MOUNTAINS RECREATION AND CONSERVATION AUTHORITY
LABOR COMPLIANCE PROGRAM OFFICE**

**LABOR COMPLIANCE PROGRAM
AUDIT RECORD FORM**

(For Use with CCR Section 16432 Audits)

An audit record is sufficiently detailed to “verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2,” when the audit record displays that the following procedures have been followed:

1. Audit of the obligation to carry workers’ compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers’ Compensation Insurance Rating Bureau;
2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received, including an estimate of journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;
3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of canceled checks remitted;
4. Audit of “illegal taking of wages” means inspection of written authorizations for deductions (as listed in Labor Code Section 224) in the contractor’s files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements;
5. Audit of the obligation to keep records of working hours (Title 8 CCR Section 16432), and pay not less than required for hours worked in excess of 8 hours/day and 40 hours/week (Title 8 CCR Section 16200(a)(3)(F)), means review and audit of weekly certified payroll records;
6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:
 - a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which were determined to be prevailing in the Director’s determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director’s office, copies of which are available at the LCO’s Office and posted at the public works job site;
 - b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the

Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's Office and posted at the public works job site.

<p>Labor Compliance Program</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Phone: _____</p> <p>Fax: _____</p>	<p align="center">(SEAL)</p>
<p>Date: _____</p>	<p>In Reply Refer to Case No.: _____</p>

Notice of Withholding of Contract Payments

<p>Awarding Body _____</p>	<p>³ Work Performed in County of _____</p>
<p>Project Name _____</p>	<p>³ Project No. _____</p>
<p>Prime Contractor _____</p>	
<p>Subcontractor _____</p>	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for _____ (“ Labor Compliance Program”) has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

The Labor Compliance Program has determined that the total amount of wages due is: \$ _____

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$ _____

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1776 is: \$ _____

LABOR COMPLIANCE PROGRAM

By: _____

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Compliance Program

Review Office-Notice of Withholding of Contract Payments

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to _____ at the following address:

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the

payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The Amount of Liquidated Damages Available Under this Notice is \$_____.

Distribution:

Prime Contractor
Subcontractor
Surety(s) on Bond

<p>LABOR COMPLIANCE PROGRAM</p> <hr/> <p>Review Office - Notice of Withholding of Contract Payments</p> <hr/> <hr/> <hr/> <p>Phone: Fax:</p>	<p>(SEAL)</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

Notice of Transmittal

To: Department of Industrial Relations
 Office of the Director-Legal Unit
 Attention: Lead Hearing Officer
 P. O. Box 420603
 San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated _____, postmarked
 _____, and received by this office on _____.

Also enclosed please find the following:

- ____ Copy of Notice of Withholding of Contract Payments
- ____ Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

By: _____

cc: Prime Contractor
 Subcontractor
 Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

ATTACHMENT E

<p>LABOR COMPLIANCE PROGRAM</p> <hr/> <p>Review Office - Notice of Withholding of Contract Payments</p> <hr/> <hr/> <hr/> <p>Phone: Fax:</p>	<p align="center">(SEAL)</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: Prime Contractor

Subcontractor

Please be advised that this office has received your **Request for Review**, dated _____, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

- “(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.
- (b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.
- (c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

- (d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

- (e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding."

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

Attention: _____

Request to Review Evidence

To: _____

From: _____

Regarding Notice of Withholding of Contract Payments Dated _____

Our Case No.: _____

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

Phone No.: _____
Fax No.: _____

PREVAILING WAGE HEARING REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 8, CHAPTER 8, SUBCHAPTER 6
(SECTIONS 17201 through 17270)

C O N T E N T S

ARTICLE 1. GENERAL

- 17201. Scope and Application of Rules.
- 17202. Definitions.
- 17203. Computation of Time and Extensions of Time to Respond or Act.
- 17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.
- 17205. Authority of Hearing Officers.
- 17206. Access to Hearing Records.
- 17207. Ex Parte Communications.
- 17208. Intervention and Participation by Other Interested Persons.
- 17209. Representation.
- 17210. Proper Method of Service.
- 17211. Filing and Service of Documents by Facsimile or Other Electronic Means.
- 17212. Administrative Adjudication Bill of Rights.

ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW

- 17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.
- 17221. Opportunity for Early Settlement.
- 17222. Filing of Request for Review.
- 17223. Transmittal of Request for Review.
- 17224. Disclosure of Evidence.
- 17225. Withdrawal of Request for Review; Reinstatement.
- 17226. Dismissal or Amendment of Assessment or Notice of Withholding of Contract Payments.
- 17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.
- 17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.
- 17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.

ARTICLE 3. PREHEARING PROCEDURES

- 17230. Scheduling of Hearing Date; Continuances and Tolling.
- 17231. Prehearing Conference.
- 17232. Consolidation and Severance.
- 17233. Prehearing Motions; Cut-Off Date.
- 17234. Evidence by Affidavit or Declaration.

- 17235. Subpoena and Subpoena Duces Tecum.
- 17236. Written Notice to Party in Lieu of Subpoena.
- 17237. Depositions and Other Discovery.

ARTICLE 4. HEARINGS

- 17240. Notice of Appointment of Hearing Officer; Objections.
- 17241. Time and Place of Hearing.
- 17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.
- 17243. Conduct of Hearing.
- 17244. Evidence Rules; Hearsay.
- 17245. Official Notice.
- 17246. Failure to Appear; Relief from Default.
- 17247. Contempt and Sanctions.
- 17248. Interpreters.
- 17249. Hearing Record; Recording of Testimony and Other Proceedings.
- 17250. Burdens of Proof on Wages and Penalties.
- 17251. Liquidated Damages.
- 17252. Oral Argument and Briefs.
- 17253. Conclusion of Hearing; Time for Decision.

ARTICLE 6. DECISION OF THE DIRECTOR

- 17260. Decision.
- 17261. Reconsideration.
- 17262. Final Decision; Time for Seeking Review.
- 17263. Preparation of Record for Review.
- 17264. Request for Participation by Director in Judicial Review Proceeding.**

ARTICLE 7. TRANSITIONAL RULE

- 17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

ARTICLE 1. GENERAL

17201. Scope and Application of Rules.

(a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731-1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.

(b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.

(c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.

(d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as "Rules" using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.5, 1771.6(b), 1773.5, 1776, and 1777.1 – 1777.7, Labor Code; and Stats. 2000, Chapter 954, §1.

17202. Definitions.

For the purpose of these Rules:

(a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprentice Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;

(b) "Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;

(c) "Awarding Body" means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;

(d) "Department" means the Department of Industrial Relations;

(e) "Director" means the Director of the Department of Industrial Relations;

(f) "Enforcing Agency" means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; *i.e.*, it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;

(g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;

(h) "Joint Labor-Management Committee" means a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).

(i) "Labor Commissioner" means the Chief of the Division of Labor Standards Enforcement and includes his or her designee who has been authorized to carry out the Labor Commissioner's functions under Chapter 1, Part 7 of Division 2 (commencing with section 1720) of the Labor Code;

(j) "Party" means an Affected Contractor or Subcontractor who has requested review of either an Assessment or a Notice of Withholding of Contract Payments, the Enforcing Agency that issued the Assessment or the Notice of Withholding of Contract Payments from which review is sought, and any other Person who has intervened under subparts (a), (b), or (c) of Rule 08 [Section 17208];

(k) "Person" means an individual, partnership, limited liability company, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character;

(l) "Representative" means a person authorized by a Party to represent that Party in a proceeding before a Hearing Officer or the Director, and includes the Labor Commissioner when the Labor Commissioner has intervened to represent the Awarding Body in a review proceeding pursuant to Labor Code section 1771.6(b).

(m) "Rule" refers to a section within this subchapter 6. The Rule number corresponds to the last two digits of the full section number. (For example, Rule 08 is the same as section 17208.)

(n) "Surety" has the meaning set forth in Civil Code section 2787 and refers to the entity that issues the public works bond provided for in Civil Code sections 3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.

(o) "Working Day" means any day that is not a Saturday, Sunday, or State holiday, as determined with reference to Code of Civil Procedure sections 12(a) and 12(b) and Government Code sections 6700 and 6701.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 2787, 3247, and 3248, Civil Code; sections 12a and 12b, Code of Civil Procedure; sections 6700, 6701, 11405.60 and 11405.70, Government Code; sections 1720 et seq., 1722, 1722.1, 1726, 1741, 1742, 1742(b), 1771.5, 1771.6, 1771.6(b), and 1776, Labor Code; and 29 U.S.C. §175a.

17203. Computation of Time and Extensions of Time to Respond or Act.

(a) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is not a Working Day, the time shall be extended to the next Working Day.

(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid; or the date of delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(c) Where service of any notice, decision, pleading or other document is by first class mail, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not extend the time within which the Director may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).

(d) Where service of any notice, pleading, or other document is made by an authorized method other than first class mailing, extensions of time to respond or act shall be calculated in the same manner as provided under section 1013 of the Code of Civil Procedure, unless a different requirement has been specified by the appointed Hearing Officer or by another provision of these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1010 through 1013, Code of Civil Procedure; and section 1742(b), Labor Code.

17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (*see* subpart (d) below), shall appoint an impartial Hearing Officer to conduct the review proceeding.

(b) The appointed Hearing Officer shall be an attorney employed by the Office of the Director – Legal Unit. However, if no attorney employed by the Office of the Director – Legal Unit is available or qualified to serve in a particular matter, the appointed Hearing Officer may be any attorney or administrative law judge employed by the Department, other than an employee of the Division of Labor Standards Enforcement.

(c) Any person appointed to serve as a Hearing Officer in any matter shall possess at least the minimum qualifications for service as an administrative law judge pursuant to Government Code section 11502(b) and shall be someone who is not precluded from serving under Government Code section 11425.30.

(d) The Director's authority under Labor Code section 1742(b) to appoint an impartial Hearing Officer, is delegated in all cases to the Chief Counsel of the Office of the Director or to the Chief Counsel's designated Assistant or Acting Chief Counsel when the Chief Counsel is unavailable or disqualified from participating in a particular matter. This delegation includes all related authority under Rule 40 [Section 17240] below to appoint a different Hearing Officer to conduct all or any part of a review proceeding as well as the authority to consider and decide or to assign to another Hearing Officer for consideration and decision any motion to disqualify an appointed Hearing Officer.

NOTE: Authority cited: sections 7, 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11425.30 and 11502(b), Government Code; and sections 7, 55, 59, and 1742(b), Labor Code.

17205. Authority of Hearing Officers.

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code section 1742, the appointed Hearing Officer shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Director, to hold a prehearing conference, to issue a subpoena and subpoena duces tecum for the attendance of a Person and the production of testimony, books, documents, or other things, to compel the attendance of a Person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation voluntarily entered into by the Parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material evidence, to call and examine a Party or witness and introduce into the hearing record documentary or other evidence, to request a Party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding, to exercise such other and additional authority as is delegated to Hearing Officers under these Rules or by an express written delegation by the Director, and to prepare a recommended decision, including a notice of findings, findings, and an order for approval by the Director.

(b) There shall be no right of appeal to or review by the Director of any decision, order, act, or refusal to act by an appointed Hearing Officer other than through the Director's review of the record in issuing or reconsidering a written decision under Rules 60 [Section 17260] and 61 [Section 17261] below.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11512, Government Code and section 1742(b), Labor Code.

17206. Access to Hearing Records.

(a) Hearing case records shall be available for inspection and copying by the public, to the same extent and subject to the same policies and procedures governing other records maintained by the Department. Hearing case records normally will be available for review in the office of the appointed Hearing Officer; *provided however*, that a case file may be temporarily unavailable when in use by the appointed Hearing Officer or by the Director or his or her designee.

(b) Nothing in this Rule shall authorize the disclosure of any record or exhibit that is required to be kept confidential or is otherwise exempt from disclosure by law or that has been ordered to be kept confidential by an appointed Hearing Officer.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 6250 et seq. Government Code and section 1742(b), Labor Code.

17207. Ex Parte Communications.

(a) Except as provided in this Rule, once a Request for Review is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the appointed Hearing Officer or the Director, from the Enforcing Agency or any other Party or other interested Person, without notice and the opportunity for all Parties to participate in the communication.

(b) A communication made on the record in the hearing is permissible.

(c) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the Hearing Officer to be controversial in the context of the specific case. If so, the Hearing Officer shall so inform the other participant and may terminate the communication or continue it until after giving all Parties notice and an opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all Parties have a reasonable opportunity to review it. Unless otherwise provided by statute or these Rules, the appointed Hearing Officer may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term “matters of procedure or practice” shall be liberally construed.

(d) A communication from the Labor Commissioner to the Hearing Officer or the Director which is deemed permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all Parties have a reasonable opportunity to review it.

(e) If the Hearing Officer or the Director receives a communication in violation of this Rule, he or she shall comply with the requirements of Government Code section 11430.50.

(f) To the extent not inconsistent with Labor Code section 1742, the provisions of Article 7 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11430.10) of the Government Code governing ex parte communications in administrative adjudication proceedings shall apply to review proceedings conducted under these Rules.

(g) This Rule shall not be construed as prohibiting communications between the Director and the Labor Commissioner or between the Director and any other interested Person on issues or policies of general interest that coincide with issues involved in a pending review proceeding; *provided that* (1) the communication does not directly or indirectly seek to influence the outcome of any pending proceeding; (2) the communication does not directly or indirectly identify or otherwise refer to any pending proceeding; and (3) the communication does not occur at a time when the Director or the other party to the communication knows that a proceeding in which the other party to the communication is interested is under active consideration by the Director.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11430.10 through 11430.80, Government Code, and section 1742(b), Labor Code.

17208. Intervention and Participation by other Interested Persons.

(a) The Labor Commissioner may intervene as a matter of right in any review from a Notice of Withholding of Contract Payments, either as the Representative of the Awarding Body or as an interested third Party.

(b) A bonding company and any Surety on a bond that secures the payment of wages covered by the Assessment or Notice of Withholding of Contract Payments shall be permitted to intervene as a matter of right in any pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and within either 30 days after the bonding company or Surety was served with a copy of the Assessment or Notice of Withholding of Contract

Payments or 30 days after the filing of the Request for Review, whichever is later. Thereafter, any request to intervene by such a bonding company or Surety shall be treated as a motion for permissive participation under subpart (e) of this Rule. A bonding company or Surety shall have the burden of proof with respect to any claim that it did not receive notice of the Assessment or Notice of Withholding of Contract Payments until after the filing of the Request for Review.

(c) The employee(s), labor union, or Joint Labor-Management Committee who filed the formal complaint which led the Enforcing Agency to issue the Assessment or Notice of Withholding of Contract payments shall be permitted to intervene in a pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and there is no good cause to deny the request. Thereafter, any request to intervene by such employee(s), labor union, or Joint Labor-Management Committee shall be treated as a motion for permissive participation as an interested Person under subpart (d) of this Rule.

(d) Any other Person may move to participate as an interested Person in a proceeding in which that Person claims a substantial interest in the issues or underlying controversy and in which that Person's participation is likely to assist and not hinder or protract the hearing and determination of the case by the Hearing Officer and the Director. Interested Persons who are permitted to participate under this Rule shall *not* be regarded as Parties to the proceeding for any purpose, but may be provided notices and the opportunity to present arguments under such terms as the Hearing Officer deems appropriate.

(e) Rights to intervene or participate as an interested party are only in accordance with this Rule. Intervention or permissive participation under this Rule shall not expand the scope of issues under review nor shall it extend any rights or interests which have been forfeited as a result of an Affected Contractor or Subcontractor's own failure to file a timely Request for Review. The Hearing Officer may impose conditions on an intervener's or other interested Person's participation in the proceeding, including but not limited to those conditions specified in Government Code §11440.50(c).

(f) No Person shall be required to seek intervention in a review proceeding as a condition for pursuing any other remedy available to that Person for the enforcement of the prevailing wage requirements of Division 2, Part 7, Chapter 1 (starting with section 1720) of the Labor Code.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11440.50(c), Government Code; and sections 1720 et seq., 1741, 1742, and 1771.6, Labor Code.

17209. Representation at Hearing.

(a) A Party may appear in person or through an authorized Representative, who need not be an attorney at law; *however*, a Party shall use the form Authorization for Representation by Non-Attorney [8 CCR 17209(b) (New 1/15/02)] to authorize representation by any non-attorney who is not an owner, officer, or managing agent of that Party.

(b) Upon formal notification that a Party is being represented by a particular individual or firm, service of subsequent notices in the matter shall be made on the Representative, either in addition to or instead of the Party, unless and until such authorization is terminated or withdrawn by further written notice. Service upon an authorized Representative shall be effective for all purposes and shall control the determination of any notice period or the running of any time limit for the performance of any acts, regardless of whether or when such notice may also have been served directly on the represented Party.

(c) An authorized Representative shall be deemed to control all matters respecting the interests of the represented Party in the proceedings.

(d) Parties and their Representatives shall have a continuing duty to keep the appointed Hearing Officer and all other Parties to the proceeding informed of their current address and telephone number.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17210. Proper Method of Service.

(a) Unless a particular method of service is specifically prescribed by statute or these Rules, service may be made by: (1) personal delivery; (2) priority or first class mailing postage prepaid through the U. S. Postal Service; (3) any other means authorized under Code of Civil Procedure section 1013; or (4) if authorized by the Hearing Officer pursuant to Rule 11 [Section 17211] below, by facsimile or other electronic means.

(b) Service is complete at the time of personal delivery or mailing, or at the time of transmission as determined under Rule 11 [Section 17211] below.

(c) Proof of service shall be filed with the document and may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) copy of letter of transmittal.

(d) Service on a Party who has appeared through an attorney or other Representative shall be made upon such attorney or Representative.

(e) In each proceeding, the Hearing Officer shall maintain an official address record which shall contain the names and addresses of all Parties and their Representatives, agents, or attorneys of record. Any change or substitution in such information must be communicated promptly in writing to the Hearing Officer. The official address record may also include the names and addresses of interested Persons who have been permitted to participate under Rule 08(d) [Section 17208].

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure and section 1742(b), Labor Code.

17211. Filing and Service of Documents by Facsimile or Other Electronic Means.

(a) In individual cases the Hearing Officer may authorize the filing and service of documents by facsimile or by other electronic means, subject to reasonable restrictions on the time of transmission and the page length of any document or group of documents that may be transmitted by facsimile or other electronic means, and subject to any further requirements on the use of cover sheets or the subsequent filing and service of originals or hard copies of documents as the Hearing Officer deems appropriate. Filing and service by facsimile or other electronic means shall not be authorized under terms that substantially disadvantage any Party appearing or participating in the proceeding as a matter of right. A document transmitted by facsimile or other electronic means shall not be considered received until the next Working Day following transmission unless it is transmitted on a Working Day and the entire transmission is completed by no later than 4:00 p.m. Pacific Time.

(b) Filings and service by facsimile or other electronic means shall not be authorized or accepted as a substitute for another method of service that is required by statute or these Rules, unless the Party served has expressly waived its right to be served in the required manner.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17212. Administrative Adjudication Bill of Rights.

(a) The provisions of the Administrative Adjudication Bill of Rights found in Article 6 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11425.10) of the Government Code shall apply to these review proceedings to the extent not inconsistent with a state or federal statute, a federal regulation, or a court decision which applies specifically to the Department. The enumeration of certain rights in these Rules may expand but shall not be construed as limiting the same or similar provision of the Administrative Adjudication Bill of Rights; nor shall the enumeration of certain rights in these Rules be construed as negating other statutory rights not stated.

(b) Ex parte communications shall be permitted between the appointed Hearing Officer and the Director in accordance with Government Code section 11430.80(b).

(c) The presentation or submission of any written communication by a Party or other interested Person during the course of a review proceeding shall be governed by the requirements of Government Code §11440.60 (b) and (c).

(d) Unless otherwise indicated by express reference within the body of one of these Rules, the provisions of Chapter 5 of Title 2, Division 3, Part 1 (commencing with section 11500) of the Government Code shall *not* apply to these review proceedings.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11415.20, 11425.10 et seq., and 11430.80(b), Government Code; and section 1742(b), Labor Code.

ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW

17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.

(a) An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under Labor Code section 1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of Code of Civil Procedure section 1013. A copy of the notice shall also be served by certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Assessment or Notice and to any Surety on a bond, if the identities of such companies are known or reasonably ascertainable. The identity of any Surety issuing a bond for the benefit of an Awarding Body as designated obligee, shall be deemed “known or reasonably ascertainable,” and the Surety shall be deemed to have received the notice required under this subpart if sent to the address appearing on the face of the bond.

(b) An Assessment or Notice of Withholding of Contract Payments shall be in writing and shall include the following information:

- (1) a description of the nature of the violation and basis for the Assessment or Notice; and
- (2) the amount of wages, penalties, and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the Enforcing Agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.

(c) An Assessment or Notice of Withholding of Contract Payments shall also include the following information:

- (1) the name and address of the office to whom a Request for Review may be sent;
- (2) information on the procedures for obtaining review of the Assessment or Withholding of

Contract Payments;

- (3) notice of the Opportunity to Request a Settlement Meeting under Rule 21 [Section 17221] below; and

(4) the following statement which shall appear in bold or another type face that makes it stand out from the other text:

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure, and sections 1741, 1742, 1743, 1771.6, and 1776, Labor Code.

17221. Opportunity for Early Settlement.

(a) The Affected Contractor or Subcontractor may, within 30 days following the service of an Assessment or Notice of Withholding of Contract Payments, request a meeting with the Enforcing Agency for the purpose of attempting to settle the dispute regarding the Assessment or Notice.

(b) Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The

settlement meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under Rule 22 [Section 17222].

(c) Nothing herein shall preclude the Parties from meeting or attempting to settle a dispute after expiration of the time for making a request or after the filing of a Request for Review.

(d) Neither the making or pendency of a request for a settlement meeting, nor the fact that the Parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [Section 17222] below.

(e) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, such a settlement meeting, other than a final settlement agreement, shall be admissible or subject to discovery in any administrative or civil proceeding.

NOTE: Authority cited: sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: sections 1742, 1742.1, and 1771.6, Labor Code.

17222. Filing of Request for Review.

(a) Any Request for Review of an Assessment or of a Notice of Withholding of Contract Wages shall be transmitted in writing to the Enforcing Agency within 60 days after service of the Assessment or Notice. Failure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules.

(b) A Request for Review shall be transmitted to the office of the Enforcing Agency designated on the Assessment or Notice of Withholding of Contract Payments from which review is sought.

(c) A Request for Review shall be deemed filed on the date of mailing, as determined by the U.S. Postal Service postmark date on the envelope or the overnight carrier's receipt in accordance with Rule 03(b) [Section 17203(b)] above, or on the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.

(d) An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [Section 17223] below at any time on or after the filing of the Request for Review with the Enforcing Agency. The service of a courtesy copy on the Department shall *not* be effective for invoking the Director's review authority under Labor Code section 1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [Section 17241(a)] below.

(e) A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, and 1771.6(a), Labor Code.

17223. Transmittal of Request for Review to Department.

Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall transmit to the Office of the Director – Legal Unit, the Request for Review and copies of the Assessment or Notice of Withholding of Contract Wages, any Audit Summary that accompanied the Assessment or Notice, and a Proof of Service or other document showing the name and address of any bonding company or Surety entitled to notice under Rule 20(a) [Section 17220(a)] above. The Enforcing Agency shall transmit these items to the following address.

Department of Industrial Relations
Office of the Director - Legal Unit
Attention: Lead Hearing Officer

P.O. Box 420603
San Francisco, CA 94142-0603

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(a) and 1771.6(a), Labor Code.

17224. Disclosure of Evidence.

(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the Affected Contractor or Subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the Affected Contractor or Subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the Enforcing Agency from introducing such evidence in proceedings before the Hearing Officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the Affected Contractor or Subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another Party in the proceeding.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b) and 1771.6, Labor Code.

17225. Withdrawal of Request for Review; Reinstatement.

(a) An Affected Contractor or Subcontractor may withdraw a Request for Review by written notification at any time before a decision is issued or by oral motion on the hearing record. The Hearing Officer may grant such withdrawal by letter, order or decision served on the Parties.

(b) For good cause, a Request for Review so dismissed may be reinstated by the Hearing Officer or the Director upon a showing that the withdrawal resulted from misinformation given by the Enforcing Agency or otherwise from fraud or coercion. A motion for reinstatement must be filed within 60 days of service of the letter, order or decision granting withdrawal of the Request for Review or, in the event of fraud which could not have been suspected or discovered with the exercise of reasonable diligence, within 60 days of discovery of such fraud. The motion shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742 and 1771.6, Labor Code.

17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.

(a) Upon motion to the appointed Hearing Officer, an Enforcing Agency may dismiss or amend an Assessment or Notice of Withholding of Contract Payments as follows:

(1) An Assessment or Notice of Withholding may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director.

(2) An Assessment or Notice of Withholding may be amended to eliminate a claim for penalties as to the affected contractor upon a determination that the affected contractor is not liable for same under either Labor Code section 1775(b) [subcontractor's failure to pay prevailing rate] or Labor Code section 1776 (g) [failure to comply with request for certified payroll records].

(3) For good cause, an Assessment or Notice of Withholding of Contract Payments may be amended to revise or increase any claim for wages, damages, or penalties based upon a recomputation or the discovery of new evidence subsequent to the issuance of the original Assessment or Notice.

(b) The Hearing Officer shall grant any motion to dismiss or amend an Assessment or Notice of Withholding downward under subparts (a)(1) or (a)(2) absent a showing that such dismissal or amendment will result in the forfeiture of substantial substantive rights of another Party to the proceeding. The Hearing Officer may grant a motion to amend an Assessment or Notice of Withholding upward under subpart (a)(3) under such terms as are just, including where appropriate the extension of an additional opportunity for early settlement under Rule 21_[Section 17221]. Unless the Hearing Officer determines otherwise, an amended Assessment or Notice of Withholding shall be deemed fully controverted without need for filing an additional or amended Request for Review.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.6, 1775(b), and 1776(g), Labor Code.

17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may issue an Order to Show Cause why an Assessment, a Withholding of Contract Payments, or a Request for Review should not be dismissed as untimely under the relevant statute.

(b) An Order to Show Cause issued under subpart (a) of this Rule shall be served on all Parties who have appeared or been served with any prior notice in the matter and shall provide the Parties with at least 10 days to respond in writing to the Order to Show Cause and an additional 5 days following the service of such responses to reply to any submission by any other Party. Evidence submitted in support or opposition to an Order to Show Cause shall be by affidavit or declaration under penalty of perjury. There shall be no oral hearing on an Order to Show Cause issued under this Rule unless requested by a Party or by the Hearing Officer.

(c) After the time for submitting responses and replies to the Order to Show Cause has passed or after the oral hearing, if any, the Hearing Officer may do one of the following: (1) recommend that the Director issue a decision setting aside the Assessment or Withholding of Contract Payments or dismissing the Request for Review as untimely under the statute; (2) find the Assessment, Withholding, or Request for Review timely and direct that the matter proceed to hearing on the merits; or (3) reserve the timeliness issue for further consideration and determination in connection with the hearing on the merits.

(d) A decision by the Director which sets aside an Assessment or Withholding of Contract Payments or which dismisses a Request for Review as untimely shall be subject to reconsideration and to judicial review in the same manner as any other Final Order or Decision of the Director. A determination by the Hearing Officer that the Assessment, Withholding, or Request for Review was timely or that the timeliness issue should be reserved for further consideration and determination in connection with the hearing on the merits shall *not* be subject to appeal or review except as part of any reconsideration or appeal from the Decision of the Director made after the hearing on the merits.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1741, 1742, 1771.5, and 1771.6, Labor Code.

17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.

(a) Upon the failure of an Affected Contractor or Subcontractor to file a timely Request for Review under Labor Code section 1742(a) and Rule 22(a) [Section 17222(a)] above, the Assessment or Notice of Withholding of Contract Payments shall become a “final order” as to the Affected Contractor or Subcontractor that the Labor Commissioner may certify and file with the superior court in accordance with Labor Code section 1742(d).

(b) Where an Assessment or Notice of Withholding of Contract Payments has become final as to at least one but not as to every Affected Contractor or Subcontractor, the Awarding Body shall continue to withhold and retain the amounts required to satisfy any wages and penalties at stake in a review proceeding initiated by any other Affected Contractor or Subcontractor until there is a final order in that proceeding that is no longer subject to judicial review.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1727, 1742, and 1771.6, Labor Code.

17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.

Where a Notice of Withholding of Contract Payments seeks to recover wages, penalties, or damages in excess of the amounts withheld from available contract payments (*see* Rule 20(b)(2) [Section 17220(b)(2)] above), an Awarding Body may recover any excess amounts that become or remain due when the Notice of Withholding of Contract Payments has become final under Labor Code section 1771.6. To recover the excess amounts, the Awarding Body shall transmit to the Labor Commissioner the Notice together with any decision of the Director or court that has become final and not subject to further review. The Labor Commissioner in turn shall certify and file the final order with the superior court in accordance with Labor Code section 1742(d).

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(d), and 1771.6, Labor Code.

ARTICLE 3. PREHEARING PROCEDURES

17230. Scheduling of Hearing; Continuances and Tolling.

(a) The appointed Hearing Officer shall establish the place and time of the hearing on the merits, giving due consideration to the needs of all Parties and the statutory time limits for hearing and deciding the matter. Parties are encouraged to communicate scheduling needs to the Hearing Officer and all other Parties at the earliest opportunity. It shall not be a violation of Rule 07_[Section 17207]’s prohibition on *ex parte* communications for the Hearing Officer or his or her designee to communicate with Parties individually for purposes of clearing dates and times and proposing locations for the hearing. The Hearing Officer may also conduct a prehearing conference by telephone or any other expeditious means for purposes of establishing the time and place of the hearing.

(b) Once a hearing date is set, a request for a continuance that is not joined in by all other Parties or that is for more than 30 days will not be granted absent a showing of extraordinary circumstances, giving due regard to the potential prejudice to other Parties in the case and other Persons affected by the matter under review. Absent an enforceable waiver (*see* subpart (d) below), no continuance will be granted nor any proceeding otherwise delayed if doing so is likely to prevent the Hearing Officer from commencing the hearing on the matter within the statutory time limit.

(c) A request for a continuance that is for 30 days or less and is joined by all Parties shall be granted upon a showing of good cause. Notwithstanding subpart (b) above, a unilateral request for a continuance made by the Party who filed the Request for Review shall be granted upon a showing of good cause if the

new date for commencing the hearing is no more than 150 days after the date of service of the Assessment or Notice of Withholding of Contract Payments.

(d) If a Party makes or joins in any request that would delay or otherwise extend the time for hearing or deciding a review proceeding beyond any prescribed time limit, such request shall also be deemed a waiver by that Party of that time limit.

(e) The time limits for hearing and deciding a review proceeding shall also be deemed tolled (1) when proceedings are suspended to seek judicial enforcement of a subpoena or other order to compel the attendance, testimony, or production of evidence by a necessary witness; (2) when the proceedings are stayed or enjoined by any court order; (3) between the time that a proceeding is dismissed and then ordered reinstated under Rule 25 [Section 17225] above; (4) upon the order of a court reinstating or requiring rehearing of the merits of a proceeding; or (5) during the pendency of any other cause beyond the Director's direct control (including but not limited to natural disasters, temporary unavailability of a suitable hearing facility, or absence of budget authority) that prevents the Director or any appointed Hearing Officer from carrying out his or her responsibilities under these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17231. Prehearing Conference.

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may conduct a prehearing conference for any purpose that may expedite or assist the preparation of the matter for hearing or the disposition of the Request for Review. The prehearing conference may be conducted by telephone or other means that is convenient to the Hearing Officer and the Parties.

(b) The Hearing Officer shall provide reasonable advance notice of any prehearing conference conducted pursuant to this Rule. The Notice shall advise the Parties of the matters which the Hearing Officer intends to cover in the prehearing conference, but the failure of the Notice to enumerate some matter shall not preclude its discussion or consideration at the conference.

(c) With or without a prehearing conference, the Hearing Officer may issue such procedural Orders as are appropriate for the submission of evidence or briefs and conduct of the hearing, consistent with the substantial rights of the affected Parties.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11511.5, Government Code, and section 1742(b), Labor Code.

17232. Consolidation and Severance.

(a) The Hearing Officer may consolidate for hearing and decision any number of proceedings where the facts and circumstances are similar and consolidation will result in conservation of time and expense. Where the Hearing Officer proposes to consolidate proceedings on his or her own motion, the Parties shall be given reasonable notice and an opportunity to object before consolidation is ordered.

(b) The Hearing Officer may sever consolidated proceedings for good cause.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11507.3, Government Code, and section 1742(b), Labor Code.

17233. Prehearing Motions; Cut Off Date.

(a) Any motion made in advance of the hearing on the merits, any opposition thereto, and any further reply shall be in writing and directed to the appointed Hearing Officer. No particular format shall be required; however, the following information shall appear prominently on the first page: (1) the case name (*i.e.*, names of the Parties); (2) any assigned case number; (3) the name of the Hearing Officer to whom the paper is being submitted; (4) the identity of the Party submitting the paper; (5) the nature of the relief sought; and (6) the scheduled date, if any, for the hearing on the merits of the Request for Review. The motion shall also include a Proof of Service, as defined in Rule 10 [Section 17210] above, showing that copies have been served on all other Parties to the proceeding.

(b) Prehearing motions shall be served and filed no later than 20 days prior to the hearing on the merits of the Request for Review. Any opposition shall be served and filed no later than 10 days after service of the motion or at least 7 days prior to the hearing on the merits, whichever is earlier. The Hearing Officer may in his or her discretion decide the motion in writing in advance of the hearing on the merits or reserve the matter for further consideration and determination at the hearing on the merits.

(c) There shall be no right to a separate oral hearing on any prehearing motion, except in those instances in which an oral hearing has been specially requested by a Party or the Hearing Officer *and* in which the enforcement or forfeiture of a fundamental right is at stake. When the Hearing Officer determines that such an oral hearing is necessary or appropriate, it may be conducted by telephone or other manner that is convenient to the Parties.

(d) With the exception of timeliness challenges under Rule 27 [Section 17227], prehearing motions which seek to dispose of a Request for Review or any related claim or defense are disfavored and ordinarily will not be considered prior to the hearing on the merits.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17234. Evidence by Affidavit or Declaration.

(a) At any time 20 or more days prior to commencement of a hearing, a Party may serve upon all other Parties a copy of any affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subpart (b). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross-examine the affiant or declarant, the right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified in person. If an opportunity to cross-examine an affiant or declarant is not afforded after request therefor is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subpart (a) shall be substantially in the following form with the appropriate information inserted in the places enclosed by brackets:

"The accompanying affidavit or declaration of [name of affiant or declarant] will be introduced as evidence at the hearing in [title and other information identifying the proceeding]. [Name of affiant or declarant] will not be called to testify orally, and you will not be entitled to question the affiant or declarant unless you notify [name of the proponent, Representative, agent or attorney] at [address] that you wish to cross-examine the affiant or declarant. Your request must be mailed or delivered to [name of proponent, Representative, agent or attorney] on or before [specify date *at least* 10 days after anticipated date of service of this notice on the other Parties]."

(c) If a timely request is made to cross-examine an affiant or declarant under this Rule, the burden of producing that witness at the hearing shall be upon the proponent of the witness. If the proponent fails to produce the witness, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence under Rule 44 [Section 17244].

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Rule 1613, California Rules of Court; section 11514, Government Code; and section 1742(b), Labor Code.

17235. Subpoena and Subpoena Duces Tecum.

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for the production of documents at any reasonable time and place or at a hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the Hearing Officer at the request of a Party, or by the attorney of record for a Party, in accordance with sections 1985 to 1985.6, inclusive, of the Code of Civil Procedure. The burden of serving a subpoena that has been issued by the Hearing Officer shall be upon the Party who requested the subpoena.

(c) Service of subpoenas and subpoenas duces tecum, objections thereto, and mileage and witness fees shall be governed by the provisions of Government Code sections 11450.20 through 11450.40.

(d) Subpoenas and subpoenas duces tecum shall be enforceable through the Contempt and Monetary Sanctions provision set forth in Rule 47 [Section 17247] below. A Party aggrieved by the failure or refusal of any witness to obey a subpoena or subpoena duces tecum shall have the burden of showing to the satisfaction of the Hearing Officer that the subpoena or subpoena duces tecum was properly issued and served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1985 through 1988, Code of Civil Procedure; section 1563, Evidence Code; sections 11450.20 through 11455.30, Government Code; and section 1742(b), Labor Code.

17236. Written Notice to Party in Lieu of Subpoena.

(a) In the case of the production of a Party of record in the proceeding or of a Person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the Party or Person. For purposes of this Rule, a Party of record in the proceeding or Person for whose benefit a proceeding is prosecuted or defended includes an officer, director, or managing agent of any such Party or Person.

(b) Service of written notice to attend under this Rule shall be made in the same manner and subject to the same conditions provided in section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(c) The Hearing Officer shall have authority under Rule 47 [Section 17247] below to sanction a Party who fails or refuses to comply with a written notice to attend that meets the requirements of this Rule and has been timely served in accordance with section 1987 of the Code of Civil Procedure. However, the Hearing Officer may not initiate contempt proceedings against the witness for failing to appear based solely on non-compliance with a written notice to attend served on the Party's attorney. A Party seeking sanctions for another Party's failure or refusal to comply with a written notice to attend shall have the burden of showing to the satisfaction of the Hearing Officer that the written notice to attend was properly issued and timely served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

17237. Depositions and Other Discovery.

(a) There shall be no right to take oral depositions or obtain any other form of discovery that is not expressly authorized under these Rules.

(b) Oral depositions may be conducted only by stipulation of all Parties to the proceedings or by order of the appointed Hearing Officer upon a showing of substantial good cause. Oral depositions will be permitted only for purposes of obtaining the testimony of witnesses who are likely to be unavailable to testify at the hearing.

(c) Nothing in this Rule shall preclude the use of deposition testimony or other evidence obtained in separate proceedings, if such evidence is otherwise relevant and admissible.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

ARTICLE 4. HEARINGS

17240. Notice of Appointment of Hearing Officer; Objections.

(a) Notice of the Appointment of a Hearing Officer under Rule 04 [Section 17204] above shall be provided to the Parties as soon as practicable and no later than when the matter is noticed for a prehearing conference or hearing.

(b) The Director may appoint a different Hearing Officer to conduct and hear the review or to conduct and dispose of any preliminary or procedural matter in a given case.

(c) A Party wishing to object to the appointment of a particular Hearing Officer, including for any one or more of the grounds specified in sections 11425.30 and 11425.40 of the Government Code or section 1742(b) of the Labor Code, shall within 10 days after receiving notice of the appointment and no later than the start of any hearing on the merits, *whichever is earlier*, file a motion to disqualify the appointed Hearing Officer together with a supporting affidavit or declaration. The motion shall be filed with the Chief Counsel of the Office of the Director at the address indicated in Rule 23 [Section 17223] above. Notwithstanding the foregoing time limits, if a Party subsequently discovers facts constituting grounds for the disqualification of the appointed Hearing Officer, including but not limited to that the Hearing Officer has received a prohibited ex parte communication in the pending case, the motion shall be filed as soon as practicable after the facts constituting grounds for disqualification are discovered.

(d) Upon receipt of a motion to disqualify the appointed Hearing Officer, the Director may: (1) consider and decide the motion or appoint another Hearing Officer to consider and decide the motion, in which case the challenged Hearing Officer shall first be given an opportunity to respond to the motion, but no proceedings shall be conducted by the challenged Hearing Officer until the motion is determined; or (2) appoint another Hearing Officer to hear the Request for Review, in which case the motion shall be deemed moot.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code . Reference: sections 170.3(c)(1), Code of Civil Procedure; sections 11425.30 and 11425.40, Government Code; and section 1742(b), Labor Code.

17241. Time and Place of Hearing.

(a) A hearing on the merits of a timely Request for Review shall be commenced within 90 days after the date it is received by the Office of the Director. The hearing shall be conducted at a suitable location within the county where the appointed Hearing Officer maintains his or her regular office, unless the hearing is moved to a different county in accordance with subpart (b) below.

(b) Upon the agreement of the Parties or upon a showing of good cause by either the Party who filed the Request for Review or the Enforcing Agency, the hearing shall be conducted at a suitable location within either (1) the county where a majority of the subject public works employment was performed, or (2) any other county that is proximate to or convenient for the Parties and necessary witnesses.

(c) A suitable location under this section means one that is open and accessible to members of the public and which includes appropriate facilities for the recording of testimony. Any facility that is regularly used by any state agency or by the Awarding Body for public hearings and that will reasonably accommodate the anticipated number of Parties and witnesses involved in the proceeding, is presumed suitable in the absence of a contrary showing. Parties seeking to change the location of a hearing under subpart (b) shall make reasonable efforts to identify, agree upon, and arrange for the availability of a suitable location within a county specified in subpart (b)(1) or (b)(2).

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11425.20, Government Code; and section 1742(b), Labor Code.

17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.

(a) Subject to the qualifications set forth below, the hearing shall be open to the public. If all or part of the hearing is conducted by telephone, television, or other electronic means, the Hearing Officer shall conduct the hearing from a location where members of the public may be physically present, and

members of the public shall also have a reasonable right of access to the hearing record and any transcript of the proceedings.

(b) Notwithstanding the provisions of subpart (a), the Hearing Officer may order closure of a hearing or make other protective orders to the extent necessary to: (1) preserve the confidentiality of information that is privileged, confidential, or otherwise protected by law; (2) ensure a fair hearing in the circumstances of the particular case; or (3) protect a minor witness or a witness with a developmental disability from intimidation or other harm, taking into account the rights of all persons.

(c) Upon motion of any Party or upon his or her own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination. However, a Party to the proceeding and the Party's Representative shall not be excluded.

(d) This section does not apply to any prehearing or settlement conference.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 777, Evidence Code, section 11425.20, Government Code, and section 1742(b), Labor Code.

17243. Conduct of Hearing.

(a) Testimony shall be taken only on oath or affirmation under penalty of perjury.

(b) Every Party shall have the right to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut any opposing evidence. A Party may be called by an opposing Party and examined as if under cross-examination, whether or not the Party called has testified or intends to testify on his or her own behalf.

(c) The Hearing Officer may call and examine any Party or witness and may on his or her own motion introduce exhibits.

(d) The Hearing Officer shall control the taking of evidence and other course of proceedings in a hearing and shall exercise that control in a manner best suited to ascertain the facts and safeguard the rights of the Parties. Prior to taking evidence, the Hearing Officer shall define the issues and explain the order in which evidence will be presented; *provided that*, for good cause the Hearing Officer later may vary the order of presentation as circumstances warrant.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

17244. Evidence Rules; Hearsay.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(b) The rules of privilege shall be recognized to the same extent and applied in the same manner as in the courts of this state.

(c) The Hearing Officer may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(d) Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it either would be admissible over objection in a civil action or no Party raises an objection to such use. Unless previously waived, an objection or argument that evidence is insufficient in itself to support a finding because of its hearsay character shall be timely if presented at any time before submission of the case for decision.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

17245. Official Notice.

(a) A Hearing Officer may take official notice of (1) the Director's General Prevailing Wage Determinations, the Director's Precedential Coverage Decisions, and wage data, studies, and reports issued by the Division of Labor Statistics and Research; (2) any other generally accepted technical fact within the fields of labor and employment that are regulated by the Director under Divisions 1, 2, and 3 of the Labor Code; and (3) any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452.

(b) The Parties participating in a hearing shall be informed of those matters as to which official notice is proposed to be taken and given a reasonable opportunity to show why and the extent to which official notice should or should not be taken.

(c) The Hearing Officer or the Director shall state in a decision, order, or on the record the matters as to which official notice has been taken.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 451, 452 and 455, Evidence Code; section 11515, Government Code; and section 1742(b), Labor Code.

17246. Failure to Appear; Relief from Default.

(a) Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party.

(b) For good cause and under such terms as are just, the appointed Hearing Officer or the Director may relieve a Party from the effects of any failure to appear and order that a review proceeding be reinstated or reheard. A Party seeking relief from non-appearance shall file a written motion at the earliest opportunity and no later than 10 days following a proceeding of which the Party had actual notice. Such application shall be supported by an affidavit or declaration based on the personal knowledge of the declarant, and copies of the application and any supporting materials shall be served on all other Parties to the proceeding. No application shall be granted unless and until the other Parties have been afforded a reasonable opportunity to make a showing in opposition. An Order reinstating a proceeding or granting a rehearing under this section may be conditioned upon providing reimbursement to the Department and the other Parties for the costs associated with the prior non-appearance.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 473, Code of Civil Procedure; and section 1742(b), Labor Code.

17247. Contempt and Monetary Sanctions.

(a) If any Person in proceedings before an appointed Hearing Officer disobeys or resists any lawful order or refuses, without substantial justification, to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceedings, or violates the prohibition against ex parte communications under Rule 07 [Section 17207] above, the Hearing Officer may do any one or more of the following: (1) certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code section 11455.20; (2) exclude the Person from the hearing room; (3) prohibit the Person from testifying or introducing certain matters in evidence; and/or (4) establish certain facts, claims, or defenses if the Person in contempt is a Party.

(b) Either the appointed Hearing Officer by separate order or the Director in his or her decision may order a Party, the Party's authorized Representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another Party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in section 128.5 of the Code of Civil Procedure. Such order or the denial of such an order shall be subject to judicial review in the same manner as a

decision of the Director on the merits. The order shall be enforceable in the same manner as a money judgment or by the contempt sanction.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 128.5, Code of Civil Procedure; sections 11455.10 through 11455.30, Government Code; and section 1742(b), Labor Code.

17248. Interpreters.

(a) Proceedings shall be conducted in the English language. The notice advising a Party of the hearing date shall also include notice of the Party's right to request an interpreter for a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or who is deaf or hearing impaired as defined under Evidence Code section 754.

(b) A request for an interpreter for a Party or witness shall be submitted as soon as possible after the requesting Party becomes aware of the need for an interpreter and prior to the commencement of the hearing. The request should include information that (1) will enable the Hearing Officer and Department to obtain an interpreter with appropriate skills; and (2) will assist the Hearing Officer in determining whether the Department or the requesting Party should pay for the cost of the interpreter.

(c) Upon receipt of a timely request, the Hearing Officer shall direct the Department to provide an interpreter and shall also decide whether the Department or the requesting Party shall pay the cost of the interpreter, based upon an equitable consideration of all the circumstances, including the requesting Party's ability to pay.

(d) A person is qualified to serve as an interpreter if he or she (1) is on the current State Personnel Board List of Certified Administrative Hearing Interpreters maintained pursuant to Government Code section 11435.25; and (2) has also been examined and determined by the Department to be sufficiently knowledgeable of the terminology and procedures generally used in these proceedings.

(e) In the event that a qualified interpreter under subpart (d) is unavailable or if there are no certified interpreters for the language in which assistance is needed, the Hearing Officer may qualify and appoint another interpreter to serve as needed in a single hearing or case.

(f) Before appointment of an interpreter, the Hearing Officer or a Party may conduct a brief supplemental examination of the prospective interpreter to see if that person has the qualifications necessary to serve as an interpreter, including whether he or she understands terms and procedures generally used in these proceedings, can explain those terms and procedures in English and the other language being used, and can interpret those terms and procedures into the other language. An interpreter shall not have had any prior substantive involvement in the matter under review, and shall disclose to the Hearing Officer and the Parties any actual conflict of interest or appearance of conflict. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if an interpreter is an employee of, acquainted with, or related to a Party or witness to the proceeding, or if an interpreter has an interest in the outcome of the proceeding.

(g) The Hearing Officer shall disqualify an interpreter if the interpreter cannot understand and interpret the terms and procedures used in the hearing or prehearing conference, has disclosed privileged or confidential communications, or has engaged in conduct which, in the judgment of the Hearing Officer, creates an appearance of bias, prejudice, or partiality.

(h) Nothing in this section limits any further rights extended by Evidence Code section 754 to a Party or witness who is deaf or hard of hearing.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 754, Evidence Code; sections 11435.05 through 11435.65, and 68560 through 68566, Government Code; and section 1742(b), Labor Code.

17249. Hearing Record; Recording of Testimony and other Proceedings.

(a) The Hearing Officer and the Director shall maintain an official record of all proceedings conducted under these Rules. In the absence of a determination under subpart (b) below, all testimony and other proceedings at any hearing shall be recorded by audiotape. Recorded testimony or other proceedings

need not be transcribed unless requested for purposes of further court review of a decision or order in the same case.

(b) Upon the application of any Party or upon his or her own motion, the Hearing Officer may authorize the use of a certified court reporter, videotape, or other appropriate means to record the testimony and other proceedings. Any application by a Party under this subpart shall be made at a prehearing conference or by prehearing motion filed no later than 10 days prior to the scheduled date of hearing. Upon the granting of any such application, it shall be the responsibility of the Party or Parties who made the application to procure and pay for the services of a qualified person and any additional equipment needed to record the testimony and proceedings by the requested means. Ordinarily the granting of such application will be conditioned on the applicant's paying for certified copies of the transcript for the official record and for the other Parties. The failure of a requesting Party to comply with this requirement shall not be cause for delaying the hearing on the merits, but instead shall result in the proceedings being tape recorded in accordance with subpart (a).

(c) The Parties may, at their own expense, arrange for the recording of testimony and other proceedings through a different means other than the one authorized by the Hearing Officer, *provided that* it does not in any way interfere with the Hearing Officer's control and conduct of the proceedings, and *further provided that*, it shall not be regarded as an official record for any purpose absent a stipulation by all of the Parties or order of the Hearing Officer.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17250. Burdens of Proof on Wages and Penalties.

(a) The Enforcing Agency has the burden of coming forward with evidence that the Affected Contractor or Subcontractor (1) was served with an Assessment or Notice of Withholding of Contract Payments in accordance with Rule 20 [Section 17220]; (2) was provided a reasonable opportunity to review evidence to be utilized at the hearing in accordance with Rule 24 [Section 17224]; and (3) that such evidence provides prima facie support for the Assessment or Withholding of Contract Payments.

(b) If the Enforcing Agency meets its initial burden under (a), the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment or for the Withholding of Contract Payments is incorrect.

(c) With respect to any civil penalty established under Labor Code section 1775, the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.

(d) All burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code, and the quantum of proof required to establish the existence or non-existence of any fact shall be by a preponderance of the evidence, unless a higher standard is prescribed by law.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 500, 502, and 550, Evidence Code; and sections 1742(b) and 1775, Labor Code. .

17251. Liquidated Damages.

(a) With respect to any liquidated damages for which an Affected Contractor, Subcontractor, or Surety on a bond becomes liable under Labor Code section 1742.1, the Enforcing Agency shall have a further burden of coming forward with evidence to show the amount of wages that remained unpaid as of 60 days following the service of the Assessment or Notice of Withholding of Contract Payments. The Affected Contractor or Subcontractor shall have the burden of demonstrating that he or she had substantial grounds for believing the Assessment or Notice to be in error.

(b) To demonstrate "substantial grounds for believing the Assessment or Notice to be in error," the Affected Contractor or Subcontractor must establish (1) that it had a reasonable subjective belief that the Assessment or Notice was in error; (2) that there is an objective basis in law and fact for the claimed

error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment or Notice.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b), 1742.1, and 1773.5, Labor Code.

17252. Oral Argument and Briefs.

(a) Parties may submit prehearing briefs of reasonable length under such conditions as the appointed Hearing Officer shall prescribe. Parties shall also be permitted to present a closing oral argument of reasonable length at or following the conclusion of the hearing.

(b) There shall be no automatic right to file a post-hearing brief. However, the Hearing Officer may permit the Parties to submit written post-hearing briefs, under such terms as are just. The Hearing Officer shall have discretion to determine, among other things, the length and format of such briefs and whether they will be filed simultaneously or on a staggered (opening, response, and reply) basis.

(c) In addition to or as an alternative to post-hearing briefs, the Hearing Officer may also prepare proposed findings or a tentative decision or may designate a Party to prepare proposed findings and thereafter give the Parties a reasonable opportunity to present arguments in support of or opposition to any proposed findings or tentative decision prior to the issuance of a decision by the Director under Rule 60 [Section 17260] below.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17253. Conclusion of Hearing; Time for Decision.

(a) The hearing shall be deemed concluded and the matter submitted either upon the completion of all testimony and post-hearing arguments or upon the expiration of the last day for filing any post-hearing brief or other authorized submission, whichever is later. Thereafter, the Director shall have 45 days within which to issue a written decision affirming, modifying, or dismissing the Assessment or the Withholding of Contract Wages.

(b) For good cause, the Hearing Officer may vacate the submission and reopen the hearing for the purpose of receiving additional evidence or argument, in which case the time for the Director to issue a written decision shall run from the date of resubmission.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

ARTICLE 6. DECISION OF THE DIRECTOR

17260. Decision.

(a) The appointed Hearing Officer shall prepare a recommended decision for the Director's review and approval. The decision shall consist of a notice of findings, findings, and an order, and shall be in writing and include a statement of the factual and legal basis for the decision, consistent with the requirements of Labor Code section 1742 and Government Code section 11425.50.

(b) A recommended decision shall have no status or effect unless and until approved by the Director and issued in accordance with subpart (c) below.

(c) A copy of the decision shall be served by first class mail on all Parties in accordance with the requirements of Code of Civil Procedure section 1013. If a Party has appeared through an authorized Representative, service shall be made on that Party at the last known address on file with the Enforcing Agency in addition to service on the authorized Representative.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure; section 11425.50, Government Code; and section 1742(b), Labor Code. .

17261. Reconsideration.

(a) Upon the application of any Party or upon his or her own motion, the Director may reconsider or modify a decision issued under Rule 60 [Section 17260] above for the purpose of correcting any error therein.

(b) The decision must be reconsidered or modified within 15 days after its date of issuance pursuant to Rule 60(c) [Section 17260(c)]. Thereafter, the decision may not be reconsidered or modified, except that a clerical error may be corrected at any time.

(c) The modified or reconsidered decision shall be served on the Parties in the same manner as a decision issued under Rule 60 [Section 17260].

(d) A Party is not required to apply for reconsideration before seeking judicial review of a decision of the Director. An application for reconsideration made by any Party shall *not* extend the time for seeking judicial review pursuant to Labor Code section 1742(c) unless the Director issues a modified or reconsidered decision within the 15-day time limit prescribed in subpart (b) of this section.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742, Labor Code.

17262. Final Decision; Time for Seeking Review.

(a) The decision of the Director issued pursuant to Section Rule 60 [Section 17260] above shall be the final decision of the Director from which any Party may seek judicial review pursuant to the provisions of Labor Code section 1742(c) and Code of Civil Procedure section 1094.5; *provided however*, that if the Director has issued a modified decision pursuant to and within the 15-day limit of the Director's reconsideration authority under Section Rule 61 [Section 17261] above and Labor Code section 1742(b), the right of review and time for seeking such review shall extend from the date of service of the modified decision rather than from the original decision.

(b) The modification of a decision to correct a clerical error after expiration of the 15-day time limit on the Director's reconsideration authority shall *not* extend the time for seeking judicial review.

(c) The time for seeking judicial review shall be determined from the date of service of the decision of the Director under Code of Civil Procedure section 1013, including any applicable extension of time provided in that statute.

(d) Any petition seeking judicial review of a decision under these Rules may be served (1) upon the Director by serving the Office of the Director – Legal Unit where the appointed Hearing Officer who conducted the hearing on the merits regularly maintains his or her office; and (2) upon the Labor Commissioner (in cases in which the Labor Commissioner was the Enforcing Agency) by the serving the regular office of the attorney who represented the Labor Commission at the hearing on the merits. The intent of this subpart is to authorize and designate a preferred method for giving the Director and the Labor Commissioner formal notice of a court action seeking review of a decision of the Director under these Rules; it does not preclude the use any other service method authorized by law.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5. Reference: sections 1013 and 1094.5, Code of Civil Procedure; and section 1742, Labor Code.

17263. Preparation of Record for Review.

(a) Upon notice that a Party intends to seek judicial review of a decision of the Director and the payment of any required deposit, the Department, under the direction of the appointed Hearing Officer, shall immediately prepare a hearing record consisting of all exhibits and other papers and a transcript of all testimony which the Party has designated for the inclusion in the record on review.

(b) The Party who has requested the record or any part thereof shall bear the cost of its preparation, including but not necessarily limited to any court reporter transcription fees and reasonable charges for the copying, binding, certification, and mailing of documents. Absent good cause, no record will be released to a Party or filed with a court until adequate funds to cover the cost of preparing the record have been paid by the requesting Party to the Department or to any third party designated to prepare the record. However, upon notice that a Party seeking judicial review has been granted *in forma pauperis* status

under California Rule of Court 985, the Department shall bear the cost of preparing and filing the record where necessary for a proper review of the proceedings.

(c) The pendency of any request for the Department to prepare a hearing record shall *not* extend the time limits for filing a petition for review under Labor Code section 1742(c) and Code of Civil Procedure section 1094.5.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure; California Rule of Court 985; section 68511.3, Government Code; and section 1742(c), Labor Code.

17264. Request for Participation by Director in Judicial Review Proceeding.

Although the Director should be named as the Respondent in any action seeking judicial review of a final decision, the Director ordinarily will rely upon the Parties to the hearing (as Petitioner and Real Party in Interest) to litigate the correctness of the final decision in the writ proceeding and on any appeal. The Director may participate actively in proceedings raising issues that specifically concern the Director's authority under the statutes and regulations governing the payment of prevailing wages on public work contracts, or the validity of related laws, regulations, or the Director's decisions as to public works coverage or generally applicable prevailing wage rates. Any Party may request the Director to file a response in the action by including a separate written request with any court pleading being served on the Director in accordance with Rule 62(d) [Section 17262(d)]. Any such separate written request should specify briefly what issues are raised by the petition that extend beyond the facts of the case and warrant the Director's participation.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure and section 1742(c), Labor Code.

ARTICLE 7. TRANSITIONAL RULE.

17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

(a) These Rules shall apply to any notice issued by the Labor Commissioner or an Awarding Body with respect to the withholding or forfeiture of contract payments for unpaid wages or penalties under the prevailing wage laws in effect prior to July 1, 2001; *provided that*, the party seeking review has not commenced a civil action with respect to such notice under the provisions of Labor Code sections 1731-1733 [repealed effective July 1, 2001].

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall *not* extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731-1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

Section III

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM OFFICE

Implementation Plan

Section III

IMPLEMENTATION PLAN

- Labor Compliance Officer receives construction contract awards/work schedules from all Departments.
- Labor Compliance Officer participates in job-start meeting.
- Labor Compliance Officer monitors work sites.
- Site monitors, both MRCA employees and others, conduct interviews and return interview sheets to Labor Compliance Officer.
- Labor Compliance Officer enters information from interviews into database.
- Labor Compliance Officer verifies information from certified payroll records.
- Labor Compliance Officer notifies contractor in writing of any discrepancies with certified payroll records.
- If clarification/correction is not received from the contractor within two weeks, Labor Compliance Officer will commence an investigation.
- Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
- Labor Compliance Officer prepares and submits public works violation reports to Labor Commissioner as required.
- Labor Compliance Officer receives Monthly Employment Utilization Report from the contractor and its subcontractors; Labor Compliance Officer maintains database of this information for year-end report to the Board.
- Labor Compliance Officer communicates on a regular basis with contractors, workers, building and trade organizations, and other community entities and in-service management to MRCA personnel.
- Labor Compliance Officer prepares and submits annual program reports to the Mountains Recreation and Conservation Authority, and the Director of the Department of Industrial Relations.
- Labor Compliance Officer manages all facets and is the primary contact for the MRCA's Labor Compliance Program.
- Labor Compliance Officer provides non-MRCA site monitors with site visitation training and assigns projects when applicable.

Section IV

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM OFFICE

Operational Manual

SECTION IV

OPERATION MANUAL

Site Visitations

1. Safety is the paramount factor for any site visit to any Mountains Recreation and Conservation Authority construction projects. Do not enter any area that appears unsafe. Site monitor is expected to exercise reasonable caution at all times.
2. All authorized personnel visiting any Mountains Recreation and Conservation Authority construction site are required to be properly identified as a MRCA representative by wearing visible picture ID's (badge), or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats and safety shoes.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.
4. Upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, you will check in at the site's administrative office. Identify yourself and state the purpose of the visit. Sign in if required to do so. If the site superintendent cites some reason that denies access to the site, promptly and politely remove yourself. Make a note of this occurrence and include in your report to the LCO.
5. Check to see that the following are displayed in the contractor's trailer:
 - EOE Posters
 - Prevailing wage sheets posted
 - Sign-in Log
 - Listing of subcontractors on site

If any of these items are not readily visible, remind the contractor that these postings are part of the contractual requirements. On subsequent visits, make sure that these items are posted, or the contractor will be found to be in noncompliance.

6. There will be times when the site superintendent is somewhere on the site and/or there is no contractor present in the trailer. You should check in at the MRCA's Inspector of Record (IOR) trailer. The IOR will also be able to tell you which contractors are on the site at that time. If all trailers are empty or locked, try to locate the site superintendent or IOR on the site prior to commencing interviewing.

Interviewing

1. Once you have checked in with the site superintendent and obtain access to the site, try to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. Approach the workers individually in a non-threatening, professional manner. Identify yourself, indicate that you are a MRCA representative, and that you need only a few seconds of their time to ask some very generic questions to ensure that they are receiving the proper rate of pay for the type of work they are doing. Again, do

not endanger yours or any tradesperson's safety in conducting these interviews. Do not insist that someone on a scaffold 40 feet in the air come down for an interview. Do not ask anyone to form a line until you can get to them; allow them to continue working until you can get to them individually.

These interviews are random; two or three tradespersons for each subcontractor are more than sufficient for one visit. Any persons missed are usually picked up on the next visit. If only one tradesperson is at the site, then interview that person if possible. If you are told that the rest of the crew will be there in an hour, do not wait, unless your total site interviewing will take that length of time. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradesperson should also be interviewed.

2. Using the Labor Compliance Site Visitation Interview form, ask each person the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview.
3. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. Mountains Recreation and Conservation Authority works with both open and closed shop trades.
4. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the LCO.
5. If someone refuses to disclose his social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.
6. If someone does not know their rate of pay (most tradespersons don't know), ask for a guesstimate. If the response is, "whatever prevailing wage is", so indicate on the form.
7. If someone indicates that he is an apprentice, make sure that you ask him what period. These can be anywhere from 1st to 10th. If he's not sure, ask him how many years he's been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.
8. ALWAYS thank them for their time.
9. Keep in mind that you are there to collect information only, do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the LCO.

Reporting

1. All original interview forms shall be submitted to the LCO no later than the end of each workweek.

Section V

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM OFFICE

Procedures

SECTION V
PROCEDURES

Certified Payroll Verification Procedures

1. Any Department responsible for any project utilizing a prevailing wage contractor will provide the Labor Compliance Officer with construction work schedules.
2. Upon receipt of certified payroll reports from general/subcontractors once a week, compare information from the Labor Compliance visitation log to the contractors certified payroll and the prevailing wage schedule.
3. Compare name and social security number with trade classification listed.
4. Ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule.
5. Check for employment of apprentices, correct rate of pay, and proper ratio to journey workers.
6. Contact the contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.
7. If clarification/correction is not received within two weeks from the contractor, the Labor Compliance Officer will commence an investigation.
8. Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
9. Retain all original interview forms and annotate the database as applicable.

Site Monitor Procedures

1. Receive construction site work schedule from Labor Compliance Officer.
2. Check in with site administrative office/site superintendent.
3. Utilizing the Labor Compliance Site Visitation Interview form, conduct interviews with workers.
4. Note on your form any infractions you may observe while conducting the interview.
5. Return interview form to the Labor Compliance Officer.
6. Report any infractions you observed to the Labor Compliance Officer.

Section VI

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM

Forms

**MOUNTAINS RECREATION AND
CONSERVATION AUTHORITY**

LABOR COMPLIANCE PROGRAM

PREVAILING WAGE HANDOUT

PREVAILING WAGE CONTRACTOR HANDOUT

THE PUBLIC WORKS REQUIREMENTS ARE:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in 8 CCR Section 16400(e).

(E) other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have violated public work laws, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

Exception: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid [,as specified in 16200(a)(3)(F).]

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

THE CONTRACTOR AND SUBCONTRACTOR SHALL:

(1) Pay not less than the prevailing wage to all workers, as defined in CCR's section 16000(a), and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director as set forth in 8 CCR Section 16200(a)(3); and

(7) Comply with Section 16101 of these regulations regarding discrimination.

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5.

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813.

(10) Comply with other requirements imposed by law.

APPRENTICE TRAINING

SEE LABOR CODE SECTION 1777.5 (e)

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program **that can supply apprentices to the site of the public work**. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also

be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement

PREVAILING WAGE CONTRACTOR HANDOUT

of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

APPRENTICE TRAINING CONTRIBUTION REQUIREMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 4,

16200(G) **Wage rates, training contributions and apprenticeship contributions.**

Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:

1. into the appropriate craft apprenticeship program in the area of the site of the public work; or
2. (if the trust fund is unable to accept such contributions) an equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by DAS.
3. If neither of the above will accept the funds, cash pay shall be as provided for in ccr's section 16200(a)(3)(I).

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 10, SECTION 230.2

§230.2. Payment of Apprenticeship Training Contributions to the Council.

(a) Contractors who are neither required nor wish to make apprenticeship training contributions to the applicable local training trust fund shall make their training contributions to the Council. Contractors may refer to the Director of the Department of Industrial Relations applicable prevailing wage determination for the amount owed for each hour of work performed by journeymen and apprentices in each apprenticeable occupation.

(b) Training contributions to the Council are due and payable on the 15th day of each month for work performed during the preceding month.

(c) Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions, (Rev. 10/91), or the following information:

- (1) The name, address, and telephone number of the contractor making the contribution.
- (2) The contractor's license number.
- (3) The name and address of the public agency that awarded the contract.
- (4) The jobsite location, including the county where the work was performed.
- (5) The contract or project number.
- (6) The time period covered by the enclosed contributions.
- (7) The contribution rate and total hours worked by apprenticeable occupation.

CERTIFYING PERSON

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 1, 16000 DEFINITIONS.

A person with the authority to affirm under penalty of perjury that the records provided, depict truly, fully and correctly the type of work performed, the hours worked, days worked and amounts paid.

CHANGES TO PREVAILING RATE AFTER AWARD

SEE LABOR CODE SECTION: 1773.6

No effect once the contract notice to bidders is published.

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published. *Exceptions; classifications marked as a double asterisks.*

CREDITS, FOR FRINGE BENEFIT PAYMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP3, ARTICLE 4,

PREVAILING WAGE CONTRACTOR HANDOUT

16200(i) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

And memo from the division of industrial relations dated 11-15-90.

THE RULE:

The contractor can pay amounts for individual benefits different than the state shows in the wage reports so long as it is not more than the total amount permitted for all benefits. Any contractor paid amount less than the total benefit requirements listed in the state wage reports must be paid to the employee.

EMPLOYEE'S SUBJECT TO PREVAILING WAGES

SEE LABOR CODE SECTION 1771, 1772 & 1776 AND SEE

AUSD general conditions all workers on the project shall be paid the wage of the trade they are most closely related to. This includes: any one on site, and off site even at remote manufacturing facilities.

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

EMPLOYER PAYMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000 DIFINITIONS

(1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;

(2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and

(3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

FRINGE BENEFIT PAYMENT REQUIREMENTS

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 1, 16000 DIFINITIONS

All fringe benefits must be irrevocably paid to an authorized fund or to the employee.

No unpaid amounts are allowed.

PREVAILING WAGE CONTRACTOR HANDOUT

FRINGE BENEFITS INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:

(A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;

(B) retirement plan benefits;

(C) vacations and holidays with pay, or cash payments in lieu thereof;

(D) compensation for injuries or illnesses resulting from occupational activity;

(E) life, accidental death and dismemberment, and disability or sickness and accident insurance;

(F) supplemental unemployment benefits;

(G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;

(H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;

(I) See definition of "Employer Payments," (3).

(J) other bonafide benefits for employees, their families and dependents, or retirees as the Director may determine; and

(4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

FRINGE BENEFITS DO NOT INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

(b) The term "general prevailing rate of per diem wages"

does not include any employer payments for:

(1) Job related expenses other than travel time and subsistence pay;

(2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;

(3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;

(4) Industry or trade promotion;

(5) Political contributions or activities;

(6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or

(7) Such other payments as the Director may determine to exclude. Interested Party. When used with reference to a particular prevailing wage determination made by the Director, includes:

PAYROLL RECORDS INCLUDE

CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS

All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the

disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

PERSONS REQUIRED TO RECEIVE PREVAILING WAGES

SEE LABOR CODE SECTIONS:

1771....., shall be paid to all workers employed on public works.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

AUSD General Conditions require all workers not in a prevailing wage classification to be paid the wage most closely related to the craft or trade they are involved with.

PREVAILING WAGE CONTRACTOR HANDOUT

WITHHOLDING PAYMENTS, JUSTIFICATION

SEE LABOR CODE SECTION: 1727 & 1771.5(b),(5)

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 5, SECTION

16435(a) "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, or contracts entered into as stages of a single project, may be the subject of withholding.

(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) "Inadequate payroll records" are any one of the following:

(1) A record lacking the information required by Labor Code Section 1776;

(2) A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor;

(3) A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401.

DIRECTOR OF INDUSTRIAL RELATIONS PRECEDENTIAL DECISIONS WHICH REQUIRE PREVAILING WAGES:

Decision 92-036: stands for the payment of out of state workers if they are working on California "Public Works"

Decision 93-019: stands for the payment of truck drivers removing, delivering or relocating material on a "Public Works"

Decision 94-017: stands for the payment of waste processors off site if the waste is exclusively from a "Public Works"

COURT DECISIONS:

Standard Traffic Services v. Department of Transportation (case 132667) Shasta: partners are due prevailing wages

If working on a "Public Works"

CALIFORNIA CODE OF REGULATIONS

Project _____

Contractor's Signature _____ **Date** _____

	Initials of Awarding Body's Representative	Initials of awarded Contractors Representative
(1) The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;		
(2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;		
(3) The penalties for failure to pay prevailing wages (for non-exempt project and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;		
(4) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776.; and penalties for failure to do so under Labor Code Section 1776(g);		
(5) The prohibition against employment discrimination under Labor Code Sections 1735 and 1777.6; the Government Code, and Title VII of the Civil Rights Act of 1964;		
(6) The prohibition against accepting or extracting kickbacks from employee wages under Labor Code Section 1778;		
(7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filing work orders on public works under Labor Code Section 1780;		
(8) The requirement to list all subcontractors under Public Contract Code Section 4100 et seq.;		
(9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et seq.;		
(10) The prohibition against unfair competition under Business and Professions Code Section 17200-17208;		
(11) The requirement that the contractor be properly insured for Workers Compensation under Labor Code Section 1861;		
(12) The requirement that the contractor abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;		
(13) The requirement to provide equal opportunity for historically underutilized groups as required in the Public Contracts Code and in the contract;		

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

LABOR COMPLIANCE PROGRAM

CALIFORNIA CODE OF REGULATIONS CHECKLIST

After the MRCA awards a public works contract, and prior to the commencement of work on that contract, a mandatory Job Start meeting (Pre-Job conference) shall be conducted by the LCO or Representative with the contractor and those subcontractors listed in its bid documents. The following is a listing of labor law requirements applicable to the public works contract:

1. Payment of Prevailing Wage Rates

- a. All workers on the project are to be paid not less than the specified general prevailing wage rate by the contractor and its subcontractors, unless subject to exemption.
- b. The contractor is responsible for complying with all applicable general prevailing wage rates for tradesworkers and any rate changes which may occur during term of the contract.
- c. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.
- d. The LCO will provide contractors with copies of prevailing wage rates upon request as well as copies of any revisions to prevailing rate wages received from the Department of Labor.

2. Apprentices

- a. It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects.

4. Certified Payroll Records

- a. Contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project.
- b. Employee payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request.
- c. Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls to the LCO when requested to do so, but no less often than once a week. **CONTRACTORS ARE RESPONSIBLE FOR SUBMITTAL OF THEIR PAYROLLS AND THOSE OF THEIR RESPECTIVE SUBCONTRACTORS AS ONE PACKAGE.** In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated with the words "No Work" for that week.

3. Penalties

- a. Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices.
- b. Penalties shall also be imposed for failure to provide certified payroll records (and to provide them by the date requested), failure to provide Monthly Utilization Reports (CC-257) by the date requested, failure to pay workers for work in excess of 8 hrs/day and 40 hrs/week, and for failure to be a properly licensed contractor or subcontractor.

5. Nondiscrimination in Employment; Equal Opportunity

1. All contractors and subcontractors are required to avoid discrimination in employment, and shall make good faith efforts to comply with the MRCA's goal in hiring Disabled Veteran Business Enterprises.

6. Kickback Prohibited

Contractors and subcontractors are prohibited from accepting or extracting "kickbacks" from employee wages.

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work or for filling work orders on public works contracts.

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on public works project when that work is equivalent to more than one-half of one percent of the total effort.

9. Proper Licensing

All contractors and subcontractors are required to be properly licensed.

10. Unfair Competition

Contractors and subcontractors are prohibited from engaging in unfair competition.

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers compensation, or to undertake self-insurance.

12. OSHA

Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

In accordance with federal and state laws, and with MRCA policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein. The contractor also herein certifies that it has been provided with a copy of the Mountains Recreation and Conservation Authority Labor Compliance Program Package with includes:

1. Labor Law Requirements Checklist (included herein)
2. Applicable General Prevailing Wage Rate Determinations
3. Blank Certified Payroll Record forms
4. Fringe Benefit Statements
5. Blank Monthly Employment Utilization (CC-257) forms
6. State apprenticeship requirements (DAS-140)
7. Copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861)

IT IS THE CONTRACTOR'S RESPONSIBILITY TO PROVIDE COPIES OF THE MRCAS LABOR COMPLIANCE PROGRAM PACKAGE TO ALL LISTED SUBCONTRACTORS AND TO ANY SUBSTITUTED SUBCONTRACTORS.

Contractor

Date

Name/Title of Contractor Authorized Representative

Name/Title of MRCA Labor Compliance Representative

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
28 CIVIC CENTER PLAZA, ROOM 525
SANTA ANA, CA 92701

TO ALL PUBLIC WORKS CONTRACTORS

Congratulations on having been awarded a public works project.

The Division of Apprenticeship Standards wishes to bring to your attention your responsibilities under California Labor Code Section 1777.5 Apprentices on Public Works. (Excerpts from California Labor Code relating to apprentices on public works. DAS-10 is attached).

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

- Submit contract award information within 10 days of contract award, to the applicable Joint Apprenticeship Committee, which shall include an estimate of Journeymen hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. This information may be submitted on the attached form. DAS 140.
- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentices work for every five hours of labor performed by a journeyman.
- Pay the apprentice rate on public works projects only to those apprentices who are registered as defined in Labor Code Section 3077.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contribution to the California Apprenticeship Council (CAC) at P.O. Box 420603, San Francisco, CA 94142.
- Training fund contributions to the CAC are due and payable on the 15th day of each month for work performed during the preceding month.
- Training fund contributions to the CAC shall be paid by check and shall be accompanied by a completed form CAC-2 (attached).

Failure to comply with the provisions of the Labor Code Section 1777.5 may result in the loss of the right to bid on all public works projects for a period of one to three years and the imposition of a civil penalty of \$100.00 for each calendar day of noncompliance. Contractors should provide a copy of this material to each subcontractor.

If the Division of Apprenticeship Standards can be of assistance to you, please contact our office at (714) 558-4126.

EXERPTS FROM THE CALIFORNIA LABOR CODE
RELATING TO APPRENTICES ON PUBLIC WORKS

Chapter 1 of Division 2
APPRENTICES ON PUBLIC WORKS

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title

1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval or denial of the apprenticeship program shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that the program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not

feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

1777.7. (a) A contractor or subcontractor that knowingly violates Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding

Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship.

(2) An affected contractor or subcontractor may obtain a review of the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the order of debarment or civil penalty. If the Administrator receives no request for review within 30 days after service, the order of debarment or civil penalty shall become final for the period authorized.

(3) Within 20 days of the timely receipt of a request for hearing, the Administrator shall provide the contractor or subcontractor the opportunity to review any evidence the Administrator may offer at the hearing. The Administrator shall also promptly disclose to the contractor or subcontractor any nonprivileged documents obtained after the 20-day time limit.

(4) Within 90 days of the timely receipt of the a request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

(5) Within 45 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the debarment or civil penalty. The decision shall contain a notice of findings, findings, and an order. This decision shall be deemed the final decision of the Administrator and shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Administrator. Within 15 days of issuance of the decision, the hearing officer may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(7) The Administrator may file a certified copy of a final order with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business.

(c) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(d) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council

Division of Apprenticeship Standards

APPRENTICES ON PUBLIC WORKS

SUMMARY OF REQUIREMENTS

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

- Submit contract award information to the applicable joint apprenticeship committee, including an estimate of the journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.

The contract award information shall be in writing, and shall be provided to the applicable apprenticeship committee within 10 days of the date of the agreement or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work. (California Code of Regulations, Title 8, Section 230.)

- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentice work for every five hours of labor performed by a journeyman.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 420603, San Francisco, CA 94142. Training contributions to the Council are due and payable on the 15th of the month for work performed during the preceding month.

Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC2 form, Training Fund Contributions, or the following information (California Code of Regulations, Title 8, Section 230.2 c):

1. The name, address and telephone number of the contractor making the contribution.
 2. The contractor's license number.
 3. The name and address of the public agency that awarded the contract.
 4. The jobsite location, including the county where the work was performed.
 5. The contract or project number
 6. The time period covered by the enclosed contributions.
 7. The contribution rate and total hours worked by the apprenticeship occupation(s).
- Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code Section 3077:

Sec. 3077. The term “apprentice” as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an “apprentice agreement”, with an employer or program sponsor. The term of apprenticeship for each apprenticeable occupation shall be approved by the chief, and in no case shall provide for no less than 2,000 hours or reasonably continuous employment for such person for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

This form should be sent to the Apprenticeship Committee of the craft or trade in area of the site of the public work. If you have any questions as to the address of the appropriate Apprenticeship Committee, contact the nearest office of the Division of Apprenticeship Standards (DAS). Consult your telephone directory under California, State of, Industrial Relations, for the DAS office in your area. *Do not send this form to the Division of Apprenticeship Standards.*

**PUBLIC WORKS
CONTRACT AWARD INFORMATION**

Name of Contractor:	Contractor's State License No.:	
Contractor's Mailing Address -- Number & Street, City, Zip Code:	Area Code & Telephone No.:	
Name & Location of Public Works Project:	Date of Contract Award:	
	Date of Expected or Actual Start of Project:	
Name & Address of Public Agency Awarding Contract	Estimated Number of Journeymen Hours:	
APPRENTICES		
Occupation of Apprentice	Number To Be Employed	Approximate Dates To Be Employed

Check One Of The Boxes Below

Please Note: Your election of options is not to be deemed a request for the immediate dispatch of apprentices. Contractors must make a separate request for actual dispatch.

- Box 1 We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations. We voluntarily choose to comply with the applicable Apprenticeship Committee Standards for the duration of this job only, with regard to training apprentices and to the payment of training contributions.
- Box 2 We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations, but do not agree to be bound by the applicable Apprenticeship Committee Standards in training the apprentices; instead, we agree to employ and train apprentice(s) in accordance with the California Apprenticeship Council regulations, including section 230.1 of the California Code of Regulations. governing employment of apprentices on public work projects.
- Box 3 We are already approved to train apprentices by the applicable Apprenticeship Committee and we will employ and train under the Standards. We will request dispatch of apprentices for this job in accordance with Section 230.1 (A), California Code of Regulations.
- Box 4 We will not request the dispatch of apprentice(s) since apprentices are not required on this job under the provisions of California Labor Code Section 1777.5, because:

Signature: _____

Typed Name _____

Title: _____ Date: _____

State of California
 Department of Industrial Relations
 P.O. Bo 420603
 San Francisco, CA 94142

Please use a separate form for each jobsite, listing the occupations for the jobsite. One check, payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are not accepted by the California Apprentice Council for federal public works projects, or for non-apprenticable occupations such as laborers, utility technicians, teamsters, etc.

TRAINING FUND CONTRIBUTIONS

California Apprenticeship
 Council

Name and Address of Contractor/Subcontractor making Contribution	Contractor's License Number
	Contract or Project Number
Name and Address of Public Agency Awarding Contract	Jobsite Location (Including County)
	Period Covered by Contribution

Classification(s) or Workers (Carpenter, Plumber, Electrician, Etc.)	Hours	Cont. Rate per Hour	Amount

Signature	Date
Title	Area Code & Telephone Number

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY CONTRACTOR FRINGE BENEFIT STATEMENT

Contract Number / Name:	Contract Location:	Today's Date:
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Contractor / Subcontractor Name:	Business Address:
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In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO:	Name: _____ Address: _____
	Pension	\$ _____	PAID TO:	Name: _____ Address: _____
	Vacation/ Holiday	\$ _____	PAID TO:	Name: _____ Address: _____
	Training and/or Other	\$ _____	PAID TO:	Name: _____ Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
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FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO:	Name: _____ Address: _____
	Pension	\$ _____	PAID TO:	Name: _____ Address: _____
	Vacation/ Holiday	\$ _____	PAID TO:	Name: _____ Address: _____
	Training And/or Other	\$ _____	PAID TO:	Name: _____ Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
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FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO:	Name: _____ Address: _____
	Pension	\$ _____	PAID TO:	Name: _____ Address: _____
	Vacation/ Holiday	\$ _____	PAID TO:	Name: _____ Address: _____
	Training And/or Other	\$ _____	PAID TO:	Name: _____ Address: _____

Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made.

Submitted: Contractor / Subcontractor	By: Name / Title
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**Mountains Recreation and Conservation
Authority
Monthly Employment Utilization Report**

Current Goals	Reporting Period	Name and Location of Contractor	Employers I.D. No.	
Minority	From			
Female	To			

CONSTRUCTION TRADE	Classifications	Total All Employees By Trade		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		American Indian or Alaskan Native		Minority Percentage	Female Percentage	Total Number of Employees		Total Number of Minority Employees	
		M	F	M	F	M	F	M	F	M	F			M	F		
Plumbers	Journey Worker											22%	13%				
	Apprentice																
	Trainee																
Laborers	Journey Worker																
	Apprentice																
	Trainee																
Carpenters	Journey Worker																
	Apprentice																
	Trainee																
Electricians	Journey Worker																
	Apprentice																
	Trainee																
Masons	Journey Worker																
	Apprentice																
	Trainee																
Total Journey Workers																	
Total Apprentices																	
Total Trainees																	
Grand Total																	

Company Official's Signature and Title	Telephone Number Include area code	Date Signed	Page 1 of 1
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Name of Contractor: _____ Business Address: _____ Contractor's License#: _____
 or Subcontractor: _____

Worker's Compensation Policy# _____

Hours Worked Each Day
 Day & Date

S = Straight Time O = Overtime SDI = State Disability Insurance
 *Other = Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed.

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	M	T	W	TH	F	S	S	Total Hours	Rate of Pay	Gross Amount Earned

			8	8								

Deductions, Contributions and Payments										Net Wages Paid for Week:	168.63	Check	12345
Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation /Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs	Savings	Other*	Total Deductions

This Project: _____
 All Projects: _____

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	M	T	W	TH	F	S	S	Total Hours	Rate of Pav	Gross Amount Earned

Deductions, Contributions and Payments										Net Wages Paid for Week:	409.58	Check	12346
Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation /Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs	Savings	Other*	Total Deductions

This Project: _____
 All Projects: _____

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	M	T	W	TH	F	S	S	Total Hours	Rate of Pav	Gross Amount Earned

Deductions, Contributions and Payments										Net Wages Paid for Week:		Check	
Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation /Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs	Savings	Other*	Total Deductions

This Project: _____
 All Projects: _____

I, _____, the undersigned, am _____ Payroll Clerk with the authority to act for and on behalf of _____, certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ 1 _____ are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.



PUBLIC WORKS PAYROLL REPORTING FORM

NAME OF CONTRACTOR OR SUB CONTRACTOR	CONTRACTORS LICENSE # SPECIALTY LICENSE #	ADDRESS
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PAYROLL NO.	FOR WEEK ENDING	SELF-INSURED CERTIFICATE #	PROJECT OR CONTRACT NO.
		WORKERS' COMPENSATION POLICY #	PROJECT AND LOCATION

(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) N H E O O X L E O D M F I P W N T I G O H N I - S	(3) WORK CLASSIFICATION	(4) Day							(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	(7) GROSS AMOUNT EARNED		(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS								(9)	
			M	T	W	TH	F	S	S														
			Date																				
			Hours Worked Each Day											NET WGS PAID FOR WEEK	CHECK NO.								
				THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION											
				THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION	TRANING	FUND ADMIN	DUES	TRV/ SUBS	SAVINGS	OTHER*	TOTAL DED- UCTIONS				
		S																					
		O																					
		S																					
		O																					
		S																					
		O																					
		S																					
		O																					

Form A 1-131 (New 2-80)
(form has been reduced to fit page)

S = Straight Time
O = Overtime
SDI = State Disability Insurance

*OTHER - Any other deductions, contributions and/or payment whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet if necessary

CERTIFICATION must be completed

I, _____, the undersigned, am _____ with the authority to act for and on behalf of _____,
(Name - Print) (position with business) (name of business and/or contractor)
certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ are the originals or true, full and correct copies of the originals which depict the payroll
(description, no. of pages)
record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Date: _____ Signature: _____

A public entity may require a more strict and/or more extensive form of certification.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: # CARPENTER

DETERMINATION: SD-23-31-4-2000-1

ISSUE DATE: February 22, 2000

EXPIRATION DATE OF DETERMINATION: June 30, 2000** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

LOCALITY: All localities within Contra Costa County

CLASSIFICATION (JOURNEYPELSON)	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Hours	Total Hourly Rate	Daily 1 1/2X	Saturday a 1 1/2X	Sunday and Holiday
ENGINEERING CONSTRUCTION										
Carpenter (Heavy and Highway work)	\$25.25	2.30	1.01	2.72 b	.30	8	31.58	44.205	44.205	56.83
Light Commercial	20.40	2.30	1.01	2.72 b	.30	8	26.73	36.93	36.93	47.13
Bridge Carpenter (Highway work)	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Millwright	25.75	2.30	1.01	2.72 b	.30	8	32.08	44.955	44.955	57.83
Pile Driver	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Diver, Wet (up to 50 ft. depth)cd	55.76 117.85	2.30	1.01	2.72 b	.30	8	62.09	89.97	89.97	
Diver, Standby	28.38	2.30	1.01	2.72 b	.30	8	34.71	48.90	48.90	63.09
Diver's Tender	27.38	2.30	1.01	2.72 b	.30	8	33.71	47.40	47.40	61.09

DETERMINATION: SD-23-31-4-2000-1A

ISSUE DATE: February 22, 2000

EXPIRATION DATE OF DETERMINATION: July 1, 2000** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

LOCALITY: All localities within Antioch County

BUILDING CONSTRUCTION

Carpenter	\$23.40	2.30	1.01	2.17 b	.30	8	29.18	40.88	40.88	52.58
Light Commercial	18.72	2.30	1.01	2.17 b	.30	8	24.50	33.86	33.86	43.22

DETERMINATION: SD-31-741-1-2000-1

ISSUE DATE: FEBRUARY 22, 2000

EXPIRATION DATE OF DETERMINATION: May 31, 2000* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY: All localities within Antioch County

Classification (Journey person)	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Hours	Total Hourly Rate	Daily 1 1/2X	Saturday a 1 1/2X	Sunday and Holiday
Terrazzo Installer	\$29.55	2.30	1.01	1.72 b	-	8	34.58	49.355	49.355	64.13
Terrazzo Finisher	23.05	2.30	1.01	1.72 b	-	8	28.08	39.605	39.605	51.13

Indicates an apprenticeable craft. Rates for apprentices are available in the General Prevailing Wage Apprentice Schedules. a Saturday in the same workweek may be worked at straight-time rate for the first 8 hours if the employee was unable to complete the 40 hours during the normal workweek. b Includes supplemental dues. c Shall receive a minimum of 8 hours pay for any day or part thereof. d For specific rates over 50 ft. depth, contact the Division of Labor Statistics and Research.

DESCRIPTION:

Engineering Construction

Refers to construction which requires a Class A license and includes bridges, highways, dams and also power plants and other heavy industrial type projects.

Building Construction

Requires a Class B license and includes non-residential buildings (such as hospitals, government buildings, public schools) and commercial buildings (with the exception of industrial buildings).

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Holiday provisions for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. Travel and/or subsistence requirements for each craft, classification or type of worker may be obtained from the Prevailing Wage Unit at (415) 703-4774.

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY
LABOR COMPLIANCE SITE VISITATION INTERVIEW FORM
FORMA DE INTREVISTA DEL SITIO SOBRE CONDECENCIA LABORARIA
Labor Compliance Officer 925/776-2073

SITE NAME: _____ DATE _____
SITIO: _____ FECHA: _____

PROJECT NAME: _____

CONTRACT #: _____ Interior / Exterior (circle)

CONTRACTOR: _____
CONTRANTE: _____

SUBCONTRACTOR: _____
SUBCONTRATANTE _____

Person Interviewed: _____
Nombre de Persona Entrevistada

S/S Number _____ / _____ / _____
Numero de Seguro Social

Position Title: _____
Posision O Titulo del Entrevistado

Task Being Performed at Time of This Interview: _____
Clase de Labor Desenpenando al Tiempo de Entrevista

Hourly Pay Rate: \$ _____
Salario Horario

=====

OBSERVATIONS:

Site Inspector: _____ Telephone _____

Project Superintendent: _____ Telephone _____

Total number of workers observed on the visit: _____

Type of work observed: _____

Type of workers observed: _____

Was the worker believable? Yes No

Did the superintendent or foreman accompany you on the site? Yes No

Explain additional information received from the worker: _____

Interview Conducted by: _____

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

July 21, 2000

Certified Mail

Mr. John Doe
ACME Painting
13414 Labor Street
Los Angeles, CA 90605

Sample
Pre Award Letter

Dear Mr. Doe:

The Mountains Recreation and Conservation Authority has identified your firm as the apparent low bidder for Contract #90-225 Portable Contract Moving Services and has scheduled board approval of a contract requiring your compliance with Division 2 Part 7 of the California Labor Code. This will require the payment of prevailing wages to all workers employed on the project and the reporting of the certified weekly payroll to the LCO. The Labor Code requires, prior to the start of work, that a person qualified to certify documents for your firm attend a review meeting with the awarding body concerning the Labor Code prevailing wage laws.

The LCO is formally requesting the appearance of the certifying person for the code review, the submittal of the required weekly certified payroll records or nonperformance reports, and the monthly submittal of employment utilization reports, all identified in the contract general conditions.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776(b) (2), which states, "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations" and California Code of Regulations section 16430 (a) (2).

The goal of the LCO is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code.

Please call the Mountains Recreation and Conservation Authority's Labor Compliance Officer at (323) 221-9944 ext 106 to set an appointment and receive the necessary forms prior to the start of your project.

Respectfully,

Elizabeth Jordan
Labor Compliance Officer

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

July 27, 2000

Certified Mail

Jane Doe
ACME Flooring
8320 Camino Santa Fe
Antioch, CA 92121

Sample
Post Award Letter

Dear Ms. Doe:

The Mountains Recreation and Conservation Authority has awarded your firm a contract requiring your compliance with Part 7, chapter 1 of the California Labor Code. This will require the payment of prevailing wages to all workers employed on the project and the reporting of the weekly payroll to the MRCA's Labor Compliance Officer.

The Labor Code requires, prior to the start of work, that a person qualified to sign and certify for your firm attend a review with the awarding body of the Labor Code prevailing wage laws.

The Labor Compliance Officer goal is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code.

Please call the Mountains Recreation and Conservation Authority's Labor Compliance Officer at (925) 776-2073 to set an appointment and receive the necessary forms prior to the start of your project.

Respectfully,

Elizabeth Jordan
Labor Compliance Officer

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

March 23, 2000

Certified Mail

John Doe
ACME Construction Co.
3170 Labor Street
Vista, CA 92083-8318

Sample
1st Request for
Certified Payrolls

Mr. Doe:

The Mountains Recreation and Conservation Authority's Labor Compliance Officer is formally requesting copies of Certified Payroll Records and Monthly Utilization Reports for the modernization of Cubberly, Jones and Fletcher schools. We are requesting the records from the beginning of the project through project completion for your firm and all subcontractors.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776 (b) (2) and Section 1776 (g) (3) and the contract general conditions requiring weekly employee payments and weekly certified payroll submittals.

Labor Code Section 1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code 1776 (g) (3) states: "The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Please forward all weekly Certified Payroll Records and Monthly Utilization Reports on the MRCA and state approved forms previously provided to: Mountains Recreation and Conservation Authority, Labor Compliance Officer, 570 W. Avenue 26, Los Angeles, CA 90065. If you have any questions, contact me at (323) 221-9944 ext 106.

Respectfully,

Elizabeth Jordan
Labor Compliance Officer

**Prime Contractor:
Project:**

Original Request: 02/08/00

This Request: 02/08/00

1. **Monthly Utilization Forms must be provided for:**
2. **Apprenticeship Training Agreement (similar to Form DAS 1) must be provided for:**
3. **Apprenticeship Training Agreement (similar to Form DAS 7) must be provided for:**
4. **Training Fund Contributions (Form CAC 2 or equivalent) must be provided for:**
5. **Public Works Contract Award Information (Form DAS 140) with the name, address and phone number of the training program notified by all project contractors must be provided for:**
6. **Fringe Benefits Statements must be provided for:**
7. **Signed certified Payroll report or statement of Non-Performance with original signatures must be provided for:**

contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package, which must be in the MRCA's Labor Compliance Officer **within one week of each weekly paycheck**. In the event there has been no work performed during a given week, the certified payroll record shall be annotated with the words "No Work" for that week.

•

8. **To determine the required hours for apprentices on this project we will need the contractor to identify all sub-contractors who will perform work in involving less than \$30,000 or who will be on the project less than 20 calendar days or both.**
9. **Either the Public Works Payroll Reporting Form (Form A-1-131) or the Mountains Recreation and Conservation Authority reporting form must be used.**

***Sample
Missing Document List***

VISITORS CENTER RE-ROOF

PRIME CONTRACTOR: **ACME ROOFING CO., INC**

Original Issue date: 00-00-0000

Latest Issue: 00-00-0000

REPORTING CONTRACTOR :COMMERCIAL AND INDUSTRIAL ROOFING CO.,INC								MRCA comments		
CONTRACTOR PROVIDED INFORMATION										
Employee Name & Social Security Number	Work Classification	Week Ending	Rate Paid	Fringes Paid	Gross Per Hour	Hours Worked	Gross Amount Paid	Prevailing Wage Rate	Amount they should have been paid	Difference
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
								Total Contractor Difference:		\$0.00

Total Project Difference \$0.00

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

March 1, 2000

Certified Mail

Mr. Doe
ACME Construction Co.
115 Market Place, Suite A
Los Angeles, CA 92029-1353

Sample
Certified Payroll Correction Letter

Dear Mr. Doe:

The Mountains Recreation and Conservation Authority's Labor Compliance Officer has formally requested copies of Certified Payroll Records and Monthly Utilization Reports for Bid Project Portable Contract 82 - Phase 2. We have reviewed your submittal and require additional information.

This new request is made pursuant to, and authorized by, California State Labor Code Sections 1774, 1775, 1776, 1777.5, 1777.7, 1810, 1813 and 1815. Additionally, the contract general conditions require weekly certified payroll record submittals to the MRCAs Labor Compliance Officer and weekly payment of employee wages.

Labor Code §1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code §1776 (g) states: "The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portions thereof, for each worker, until strict compliance is effectuated."

Please correct and supply the data requested in the attachments and submit on approved forms to: Mountains Recreation and Conservation Authority, Labor Compliance Officer, 570 W. Avenue 26, Los Angeles, Ca 90065.

If you have any questions, contact me at (323) 221-9944 ext 106.

Respectfully,

Elizabeth Jordan
Labor Compliance Officer

Enc. (2)

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

Report of Action for Prevailing Wage Violations

Name of Project: _____

Contract Number: _____ First Advertised Date: _____

County Where Work Is Performed: _____

Date Notice of Completion Filed: _____

Date of Project Acceptance or Current Percent Complete: _____

Name and Address of Prime Contractor:

Project's Scope of Work: _____

Contractors in Violation of the Labor Code and their Scope of Work: _____

Statement of the Issues Identified to the Contractor: _____

Summary of the Audit Investigation:

CPR Spread Sheets
Labor Code Sections Violated:

Summary of Penalty Assessment Justification: _____

Identify Labor Code 1775 and 1813 Penalties Requested with Calculated Totals:

Is the Violation Due to Mistake, Inadvertence or is it a Willful Failure to Pay the Correct Wages:

Previous Record in Meeting Prevailing Wage Obligations: _____

Identify and Provide All Correspondence: _____

Identify and Provide Any Contractor Response: _____

Recommend Penalty Assessment: _____